No. 2813

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOHN A. ROEBLING'S SONS COMPANY OF CALIFORNIA and I. P. MORRIS COMPANY,
Appellants,

vs.

IDAHO RAILWAY LIGHT & POWER COMPANY, O G. F. MARKHUS, Receiver of said Company, GUARANTY TRUST COMPANY, Trustee, ELECTRIC INVESTMENT COMPANY, AMERICAN STEEL AND WIRE COMPANY, GENERAL ELECTRIC COMPANY and WESTINGHOUSE ELECTRIC AND MANUFACTURING COMPANY,
Appellees.

Transcript of the Record

Upon Appeal from United States District Court for the District of Idaho, Southern Division.

SYMS-YORK CO., PRINTERS & BINDERS, BOISE 40907

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Names and Addresses of Attorneys of Record.

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Salt Lake City, Utah,
Solicitor for Appellees Idaho Railway Light & Power Company, O. G. F. Markhus, Receiver, and Electric Investment Company.

Messrs. WYMAN & WYMAN,
Boise, Idaho,
Solicitors for Appellee Guaranty Trust Company.

Messrs. HAWLEY & HAWLEY,
Boise, Idaho,
Solicitors for Appellee General Electric Company.

Messrs. WOOD & DRISCOLL,
Boise, Idaho,
Solicitors for Appellee American Steel and Wire Company.

K. I. PERKY, Esq.,
Boise, Idaho,
and
B. S. CROW, Esq.,
Salt Lake City, Utah,
Solicitors for Appellee Westinghouse Electric and Manufacturing Company.

Upon Appeal from United States District Court for the District of Idaho, Southern Division.

WESTINGHOUSE ELECTRIC & MANUFACTURING COMPANY, *Plaintiff*,

vs.

IDAHO RAILWAY, LIGHT & POWER COMPANY, *Defendant.*

In Equity—No.....

BILL OF COMPLAINT.

To the Honorable Judges of the District Court of the United States, for the District of Idaho, Southern Division:

The plaintiff, Westinghouse Electric & Manufacturing Company, a corporation duly organized and existing under the laws of the State of Pennsylvania, and a citizen of said State, brings this, its bill of complaint against the Idaho Railway, Light & Power Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, and a citizen of said State, and doing business in the State of Idaho, and having its principal place of business and residence in the Southern Division of the District of Idaho, on behalf both of itself and of all other creditors of said Idaho Railway, Light & Power Company who may hereafter join in the prosecution of this suit, and thereupon the plaintiff alleges as follows:

First.

That the plaintiff Westinghouse Electric & Manufacturing Company, hereinafter sometimes called the

Westinghouse Company, is a corporation duly organized and existing under the laws of the State of Pennsylvania, and a citizen and resident of said State.

The defendant Idaho Railway, Light & Power Company, hereinafter called the Railway Company, is, and at all the times hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Maine and a citizen of said State, but having its principal place of business and residence in the State of Idaho, and in the Southern Division of the District of Idaho, wherein said defendant is engaged in the business of generating and distributing electricity, and of owning and operating through a lessee, electric railway lines, as hereinafter stated.

That this is a civil suit in the nature of a claim in equity and is between citizens of different states and the amount in controversy herein exceeds the sum of three thousand dollars, exclusive of interest and costs.

Second.

That the defendant Railway Company was organized under the laws of the State of Maine in the month of November, 1911, and at the time of its organization, or shortly thereafter, acquired by purchase a power plant on the Snake River between Owyhee and Ada Counties in the State of Idaho, known and hereafter referred to as the Swan Falls power plant, with distributing lines from said plant extending through and into the counties of Canyon, Owyhee and Ada in the State of Idaho, and shortly thereafter acquired distributing systems in Nampa, Idaho, formerly be-

longing to the Dewey Electric Light & Power Company; in Caldwell, Idaho, formerly belonging to the Caldwell Power Company, Limited; in Middleton, Idaho, formerly belonging to the Southern Idaho Water Power Company, and has since constructed distributing systems in the villages of Star and Eagle, Idaho, and during the year 1912, acquired by purchase the electric railway properties formerly belonging to the Boise & Interurban Railway Company, Limited, being an interurban electric railway line from Boise, Ada County, Idaho, to Caldwell, Canyon County, Idaho, with an urban system in Boise City; the Boise Valley Railway Company, being an interurban line from Boise, Ada County, Idaho, to Nampa, Canyon County, Idaho, with a local urban and suburban system in and around Boise City; and the Boise Railroad Company, Ltd., being an urban and suburban line of electric railway in and around Boise City; that the said defendant railway company has also acquired by purchase during the year 1912, a large number of stocks and bonds of the Idaho-Oregon Light & Power Company, a corporation engaged in the manufacture and distribution of electrical energy in various cities and villages in southwestern Idaho, and plaintiff is informed and believes has acquired other hydro-electric properties or interests therein to the said plaintiff unknown.

That the Railway Company by reason of its acquisition and ownership of said properties is engaged in public service of a delicate and important nature with heavy responsibilities to the public, owning and

directly operating, as it does, a power plant which, as plaintiff is informed and believes, is the principal source of electric supply in southwestern Idaho, and upon which many communities place their sole reliance for electrical energy for lighting, manufacturing, mining and other purposes; other communities are partially supplied from independent or affiliated sources, likewise requiring supply from said Swan Falls plant to supply their demands, and also in the operating through its said lessee of its traction lines, amounting to some sixty (60) odd miles of interurban lines, and over ten (10) miles of urban and suburban lines in and around Boise City, which said traction lines are operated, as plaintiff is informed and believes, through the Idaho Traction Company, a Delaware corporation, the stock in which is owned by the said Railway Company, and which leases from said Railway Company the railway or traction properties of said Railway Company, yielding and paying in return therefor to the said Railway Company its net profits over operation.

Third.

On information and belief that said defendant Railway Company has an authorized capital stock of thirty million dollars ($30,000,000), of which twenty million dollars ($20,000,000) is common stock and ten million dollars ($10,000,000) is non-cumulative preferred stock. Of the common stock there has been issued $12,565,100.00, par value, and preferred stock $3,536,400.00, par value, which is outstanding in the

hands of the public. That shortly after its organization the said defendant Railway Company created an issue of bonds to the amount of thirty million dollars ($30,000,000), secured by mortgage on said defendant's properties known as a first and refunding mortgage dated as of December 1st, 1911, and bearing interest at five per cent per annum, paid semi-annually, of which bonds to the extent, amount, and face value of $7,255,000, have been issued, delivered and are outstanding in the hands of the public, and the balance are subject to certification, issuance and delivery under said terms and conditions stated in said mortgage.

That in addition to the bonds so outstanding the properties of the said defendant are encumbered by the following underlying divisional mortgages upon parts of its said system; bonds of the Boise & Interurban Railway Company, Limited, $1,073,000; bonds of the Boise Railroad Company, Limited, $389,000, which said bonds are secured by mortgages upon the properties hereinbefore mentioned as acquired from the Boise & Interurban Railway Company, Limited, and from the Boise Railroad Company, Limited, respectively.

On information and belief plaintiff states that failure to meet the interest on the mortgage indebtedness upon any of said mortgages will by the terms thereof constitute a default in said mortgages and will mature, both principal and interest on the same, and render such mortgages enforcible and destroy the security of general creditors.

Fourth.

That the defendant Railway Company since acquiring the said properties hereinbefore mentioned has consolidated the power properties, generating stations, transmission and distribution lines, and electric railway or traction properties, with all extensions thereof, into single systems respectively. That the said power properties are operated as hereinbefore stated directly by the said Railway Company which is a retailer of power in various cities and villages hereinbefore mentioned, and in other places, and is a wholesaler of power to the said Idaho-Oregon Light & Power Company and to the said Traction Company, through which as lessee, as above stated, the said railway company operates its said traction properties. That said traction properties are likewise operated as a single and interdependent system, and the properties heretofore belonging to the different companies have been unified, not only in control and management but in physical connections and extensions, so that what were formerly three separate operating companies and properties are now in fact one, and the lines of demarcation between them have been obliterated, likewise the rolling stock of the constituent companies has been used without decrimination on the entire system; barns and repair shops have been consolidated and a single overhead electrical system established, rendering the operation of said traction properties into their constituent elements practically impossible. That to segregate either the power properties or the traction properties

into their component parts, would be attended with great difficulty and cause great loss and waste, and cause great increase in operating expenses, and diminish the security of the bondholders and general creditors.

Fifth.

Plaintiff Westinghouse company alleges that on the following dates defendant Railway Company, for valuable consideration, made, executed and delivered to plaintiff its promissory notes, bearing the dates, maturities, and being for the principal sum, and each bearing interest at 6 per cent. per annum from date until paid, set forth as follows:

Date Drawn	*Date Due*	*Principal*
Mar. 20, 1913	July 20, 1913	$ 2,908.44
Mar. 20, 1913	Nov. 20, 1913	2,908.43
Mar. 31, 1913	July 31, 1913	7,670.62
Mar. 31, 1913	Nov. 30, 1913	7,670.62
May 2, 1913	Sep. 2, 1913	2,644.70
May 2, 1913	Jan. 2, 1914	2,644.70
July 16, 1913	Oct. 16, 1913	14,313.93

making an aggregate of $40,761.44, exclusive of interest, and none of which has been paid and all of which is now due and owing from the defendant Railway Company to the said plaintiff Westinghouse Company, with interest, as aforesaid, save and except the sum of $2,644.70, which, while unpaid, is not due until January 2, 1914.

That in addition to the foregoing notes the said defendant Railway Company is indebted to the said

plaintiff on open account in the sum of at least $10,-047.55 for materials and supplies sold and delivered by the plaintiff to the defendant between the first day of March, 1913, and the first day of November, 1913, at the special instance and request of the defendant, which said sum is now due and owing from the defendant to the plaintiff. Payment of all of said notes due, with interest, and for all of said materials has been demanded by the plaintiff of defendant, and refused. The plaintiff asks leave in this connection to hereafter amend this paragraph so as to state the full amount due on open account.

That all of said notes were given and said indebtedness for material was incurred for electrical supplies and apparatus, including generators, transformers, substation apparatus and other electrical apparatus and equipment necessary to be used and actually used by defendant in the maintenance and operation of its electrical system, including both its traction properties and its electrical generating and distributing system in the discharge by the said defendant of its obligation and duties.

Sixth.

That the plaintiff is informed and believes and so states that, since acquiring the said properties and issuing the bond hereinbefore mentioned, the defendant has expended large sums of money, aggregating upwards of $500,000 in extensions, improvements and additions and other capital expenditures, to and upon its existing lines, including both its electrical and traction properties; that said expenditures have

enhanced the value of its properties, but have exceeded the resources of said defendant.

That the defendant is in addition thereto under liability for materials and supplies to complete its enlargements and additions, and to complete the payment for properties, which defendant purchased, but which have not yet been completed, and on which large sums are still due, and that it has not and will not have the resources with which to pay for such additions, improvements and new acquisitions unless appropriate means are taken for conserving the properties and assets of said defendant and enabling it to finance its said accruing obligations.

Seventh.

On information and belief, that the defendant has outstanding a floating indebtedness for materials, equipment and supplies furnished aggregating approximately $1,000,000; that it has accounts payable amounting on December 1, 1913, to $116,621, and notes payable, amounting on said date to $764,361.44, all of which said floating indebtedness is overdue; that the defendant is unable to pay the same and the holders thereof are pressing for payment; that it has no means at hand with which to meet its immediate pressing needs in operating its systems; some of its creditors have already filed mechanics' liens, others have brought suit and levied attachment for their claims, and others are threatening to do likewise.

That defendant is not only unable to meet said obligations, but also is unable, under the actions already taken and threatened against it, to accumulate an

interest reserve, sufficient to meet the interest upon its bonds, and there is grave danger that default may, therefore, accrue upon all or some of the issues of general or divisional bonds upon said defendant's system, resulting in said system being broken up into its component parts and the interest of the bondholders, creditors and public sacrificed by reason thereof.

That the defendant's position is rendered more acute by reason of default in interest upon the bonds of the Idaho-Oregon Light & Power Company, held by the defendant in the passing of said company into the hands of a receiver, resulting in a loss to said defendant of the money, approximating $2,000,000, invested by said defendant in the Idaho-Oregon Light & Power Company; and also by the existing financial depression.

That it is impossible for the defendant, under present conditions, to raise the money necessary to meet its said obligations, and with the attachments now standing against it, has not funds on hand sufficient to meet its taxes, which are now due and which will be delinquent on the first Monday in January, 1914, if not before paid.

Eighth.

On information and belief, plaintiff alleges that the only means whereby defendant can meet its obligations under its mortgages, pay its floating indebtedness and discharge its current obligations is by continued maintenance and operation of said system as a whole; that any suits upon or processes against its

properties or revenues would seriously embarrass and cripple it and diminish, if not destroy, its power to operate successfully its system or the exercise of its franchises.

That said system, together with its appurtenances, is now in reasonably good state and condition; that it is of vital importance to the people of Ada and Canyon Counties in the State of Idaho that said system shall continue to be operated as a whole and that it shall be preserved as such; that the traction lines of said defendant serve annually a vast number of people and afford the only or at least one of the principal means of direct communication between the points served by it; that many people have made investments, acquired residences and engaged in business in reliance upon and under the assumption that said system will be maintained and operated as a unit, and it is important to all concerned that the same shall be protected in its integrity.

Ninth.

Plaintiff alleges that, in view of the facts above set forth, unless this Court shall take said property of the defendant into judicial custody for the protection of every interest, immediately upon default individual creditors will assert their rights and remedies in this and other Courts, resulting in a multiplicity of suits and attempts by one creditor to get a preference over others through liens, attachments, judgments and other forms of priority; that it will be rendered impossible to maintain the integrity of the defendant's said system, and the same will be broken

up to the serious inconvenience of the public, and to the serious loss and detriment of all persons interested in said properties, whether as bondholders, creditors, or the public.

An attempt by plaintiff to enforce at law its claim as general creditor would precipitate similar action on the part of other creditors, which would lead to wasteful strife and controversy which plaintiff believes can be avoided and this property preserved for equitable distribution among those entitled thereto only by the intervention by the Court of Equity and the granting of equitable relief, including the appointment of a Receiver to take charge of and preserve the property of the defendant, continue its operation and collect and receive and properly appropriate the income thereof until the final decree of the Court in the premises, which said appointment of a receiver is in the judgment of the plaintiff imperatively necessary.

Wherefore, inasmuch as the plaintiff has no adequate remedy at law for the aforesaid grievances, and can have relief only in equity, the plaintiff has filed this bill in behalf of itself and other creditors of defendant, who may come in and contribute to the prosecution of this suit, and prays for equitable relief as follows:

1. That the rights of the plaintiff and all of the creditors of defendant may be ascertained and decreed, and that the Court will fully administer the fund in which the plaintiff is interested, including all the assets of the defendant, and will for such pur-

pose marshal all said assets, and ascertain the several and respective liens and priorities existing thereon, and enforce and decree the rights, liens and equities of the creditors of the defendant as the same may be finally ascertained and decreed by the Court, upon respective interventions or applications of each and every such creditor or lienor in and to each and every portion of the assets and property of the defendant.

2. That, for the purpose of preserving the defendant's system and protecting it from dismemberment, a Receiver may be appointed for the said defendant and all of the property of the defendant, real, personal and mixed, including all rights of the defendant as lessor of the traction properties now under lease to and operated by the Idaho Traction Company, with the right to receive all rents and moneys accruing to said defendant under said lease, with full power to issue for collection, receive and take into his possession goods, chattels, rights, credits, moneys; effects, lands, tenements, books, papers and property of every description of defendant Railway Company, and with all the incidental powers of Receivers in like cases and with full power and authority to operate the electrical, generating, transmitting and distributing system of defendant, and to collect and receive all rents, issues, profits and income thereof, and to apply the same and the receipts therefrom under the orders or decrees of the Court, for such period as the Court shall order, to protect and preserve the corporate franchises, privileges and property of the said defendant from being sacrificed under any proceedings

which can or may be taken, liable to prejudice or sacrifice the same, and to do any and all acts which may be necessary to preserve valuable rights and franchises of defendant and may be otherwise meet and proper.

3. That temporarily pending this suit, an injunction may issue against the defendant and all persons claiming and acting by, through or under it, and all other persons, to restrain them from interfering with said Receiver, taking possession of said property, or from further prosecuting or continuing any action against the said defendant or the said property, or any part thereof, all of which said suits are hereby stayed, to the intent and purpose that all such rights may be enforced in this suit.

4. That, if necessary to completely administer said estate, and to protect the rights in the properties, a sale of said properties may be ordered as a whole, and proceeds of the sale applied to the satisfaction of the claims of the creditors, including the plaintiff, in accordance with such rights and priorities as they may establish.

5. That a writ of subpoena may be granted to the plaintiff to be directed to the defendant, requiring the said defendant personally to appear on a certain day before the Court, and then and there to make full and true answer in the premises (but not under oath, which is hereby waived), and further do perform and abide by such other or further order, direction or decree as the Court shall consider meet.

6. That the plaintiff have such further and other relief as the Court may deem proper and equitable.

And the plaintiff will ever pray.

PERKY & CROW.

K. I. PERKY, BEN S. CROW,

Solicitors for Plaintiff.

State of Idaho,
County of Ada,—ss.

Benjamin S. Crow, being duly sworn, deposes and says that he is one of the solicitors for the plaintiff above named, that neither the said plaintiff nor any officer thereof resides within the district or state of Idaho, or within Ada County, wherein resides this affiant, its solicitor; that, therefore, he makes this affidavit in its behalf; that he has read the foregoing bill of complaint and knows the contents thereof; and that he verily believes the facts therein stated to be true.

(Seal) BENJAMIN S. CROW.

Subscribed and sworn to before me this 23rd day of Dec., 1913. D. J. A. DIRKS,

Notary Public.

Endorsed: Filed Dec. 23, 1913.

A. L. Richardson, Clerk.

(Title of Court and Cause.)

ANSWER OF DEFENDANT IDAHO RAILWAY, LIGHT & POWER COMPANY.

To the Honorable, the Judges of the District Court of the United States for the District of Idaho, Southern Division.

And now comes the defendant, Idaho Railway, Light & Power Company, a corporation of the State of Maine, and a citizen of said State, and in answer to the bill of complaint of the plaintiff herein, or so much thereof as this defendant is advised is material and necessary for it to answer, and so answering, respectfully shows to this Honorable Court, and alleges:

First.

That it admits the allegations of the plaintiff's bill of complaint.

Second.

That it specifically admits the indebtedness alleged to be due from the defendant to the plaintiff. Admits it is unable to pay the same, and admits that it is unable to meet and pay its other obligations to its creditors or to maintain itself as a going concern, and that it is necessary that a receiver be appointed to conserve the assets of said defendant and to protect the interests of its creditors and of the public.

Wherefore, the defendant, having fully answered the said complaint according to its best knowledge and belief, submits its rights to this Honorable Court and prays that the Court may appoint a receiver as prayed for in the plaintiff's complaint and that the Court may grant to this defendant, as well as to the plaintiff, and all parties who may intervene in said cause, such relief as may be just and equitable in the premises.

And the defendant will ever pray.

IDAHO RAILWAY, LIGHT & POWER COMPANY,
By O. G. F. Markhus,
General Manager.

Attest:
JOHN F. MacLANE,
Assistant Secretary.

JOHN F. MacLANE,
Solicitor for defendant, Idaho Railway, Light & Power Company.

(Seal)

CAVANAH, BLAKE & MacLANE,
Of Counsel.

Endorsed: Filed Dec. 23, 1913.
A. L. Richardson, Clerk.

(Title of Court and Cause.)

ORDER APPOINTING RECEIVER.

And now on the 23rd day of December, 1913, this cause came on to be heard upon the bill of complaint and on the answer of the defendant thereto, this day filed, upon motion for the appointment of a receiver, both plaintiff and defendant being present and represented by their counsel, and the Court being advised.

It is *ordered, adjudged and decreed* that O. G. F. Markhus, of Boise City, Ada County, Idaho, be, and hereby is appointed receiver of the defendant, Idaho Railway, Light & Power Company, and all property of said defendant, real, personal and mixed, of whatsoever kind or description, and wheresoever situated,

including all its power stations, transmission and distribution lines and system, and its estate and interest as lessor of the electric railway or traction lines under lease to the Idaho Traction Company, of all buildings and appurtenances, electrical and other apparatus and equipment, tools, machinery, furniture, fixtures, materials, supplies, books of account, records and other books, papers and accounts, cash in bank, on deposit and in hand, money, debts, things in action, credits, stocks, bonds, securities, deeds, leases, contracts, muniments of title, bills receivable, rents, issues, profits, and income accruing and to accrue, together with all interest, easements, privileges and franchises, and all assets of every kind.

That the said receiver be and hereby is authorized immediately to take possession of said electrical, generating, transmitting and distributing plants and system, and to run, manage and operate the same, as will in his judgment produce the most satisfactory results, and also to exercise all the rights of the said Railway Company as lessor of the said traction system, collecting and receiving the rents and profits thereof, according to the terms of the lease. From said Idaho Traction Company, and to continue said operation of both said power and traction properties in the same manner as at present, and to discharge in all respects the public duties obligatory upon said defendant, and preserve and protect said system in proper condition and repair, and protect title and possession, and secure and develop the business of the same.

That the said receiver is hereby authorized and empowered to employ, discharge and fix the compensation of all officers, attorneys, managers, superintendents, agents and employees; to make such payments and disbursements as may be needful and proper in so doing. That said receiver be and is hereby authorized to collect rents, incomes, tolls, and profits of said property, and to make appropriate payments therefrom on account of accruing necessary charges of all kinds, being empowered for such purposes to borrow money if needful, in his judgment, in order to comply with this direction, and also, so far as may be needful, to pay off current bills for labor and supplies, but in all cases first obtaining the approval and authorization of this Court; to pay any and all loans thus contracted for, and reserving to this Court the power to authorize upon proper application the borrowing of money for other purposes. And said receiver is hereby authorized, in his discretion, from time to time out of funds coming into his hands, to pay the expenses of operating said property and executing his said trust, and all taxes and assessments upon said properties, or any part thereof, and also subject to approval by the Court to pay and discharge all claims arising from the previous operation of said company as in his judgment, on examination, are proper to be paid as expenses of operation, and the current and unpaid payrolls and vouchers, and supply accounts, incurred in the operation of said property at any time within four months prior hereto; that said receiver is hereby required to open prop-

er books of account wherein shall be stated the earnings, expenses, receipts and disbursements of his said trust and preserve proper vouchers for all payments by him made on account thereof.

It is further ordered that the said receiver give bond in the sum of fifty thousand dollars ($50,000), conditioned that he will well and truly perform the duties of his office and will duly account for all moneys and property which may come into his hands, and abide by and perform all things which he shall be directed to do, with sufficient sureties to be approved by the judge of this Court, and that said bond be forthwith filed in the office of the Clerk of this Court.

And it is further ordered that each and every of the officers, directors, agents and employees of the defendant, Idaho Railway, Light & Power Company, and all other persons whomsoever, be and are hereby required and commanded forthwith, upon demand of said receiver, or his duly authorized agent, to turn over and deliver to said receiver or agent, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys, or other property of the said defendant, Idaho Railway, Light & Power Company, in his, or in their hands, or under his or their control. And each of said officers, directors, agents and employees is hereby commanded and required to obey such orders as may be given to them from time to time by said receiver, or his duly constituted representative, in conducting the operation of said property, and in discharging his duties as receiver.

And the said defendant, Idaho Railway, Light & Power Company, and its officers, directors, agents and employees and all other persons claiming to act by, through or under it, or them, and all said persons whomsoever, are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the receiver is hereby appointed, or interfering in any way to prevent the discharge of his duties by said receiver, or his operation of said property. And all persons having claims against said defendant, whether action is now pending thereon or not, are hereby restrained and enjoined from commencing or further prosecuting or maintaining said action, except by leave first had and obtained from this Court, and all pending actions are hereby stayed.

Any party in interest or any other person who, by intervention, may become party to this cause, may apply either for modification of this order or for further direction.

Dated December 23, 1913.

FRANK S. DIETRICH,

United States District Judge for the District of Idaho, Southern Division.

Endorsed: Filed Dec. 23, 1913.

A. L. Richardson, Clerk.

(Title of Court and Cause.)

BILL OF INTERVENTION.

JOHN A. ROEBLING'S SONS COMPANY OF CALIFORNIA.

To the Honorable the Judge of the District Court of the United States for the Southern District of Idaho, Southern Division.

Your intervenor, John A. Roebling's Sons Company of California, a citizen of the State of California and a resident of said state, by leave of Court first had and obtained, and pursuant to the order of said Court heretofore made in the above entitled consolidated actions authorizing and directing all creditors having claims against the said defendant, the Idaho Railway, Light and Power Company, to intervene in said cause on or before the 30th day of April, 1913, now presents this, its Bill of Intervention, in said consolidated actions and its complaint and petition for allowance of its claim against the Idaho Railway, Light and Power Company, said corporation defendant, as a preferential claim, and represents and shows to your Honors as follows:

I.

That your intervenor is a corporation organized and existing under and by virtue of the laws of the State of California, having offices and places of business in the City of San Francisco, State of California, and in the City of Portland, State of Oregon, and it is and at all the times herein mentioned was engaged in the business of selling wire and wire rope used for the construction of street railways and interurban

roads and power transmission lines on the Pacific Coast, and for use in the State of Idaho.

II.

That the defendant in the above entitled action, Idaho Railway, Light and Power Company, is a corporation duly incorporated under and by virtue of the laws of the State of Maine and at all times herein mentioned and since the year 1911 has been and now is the owner of various street railways and interurban railways and power plants in the Counties of Ada and Canyon and Owyhee, in the State of Idaho, and has been and is engaged in the maintenance and operation of said street railways and interurban electric lines and power plants more specifically, to-wit: The Street Railway system in the City of Boise, the interurban lines extending therefrom to the towns of Nampa and Caldwell and intermediate points; and the power plant at Swan Falls, Idaho, together with power transmission line from said Swan Falls to the pumping plants of the Gem Irrigation District distant therefrom about thirty miles and located in Owyhee County in said State. That said defendant at all times herein mentioned has been and is the owner and maintains and operates the lighting plants in the towns of Nampa and Caldwell in said State. That said defendant received a large income, profit and earnings from the operation of said roads and power plants herein described and referred to.

III.

That on or about the 23rd day of December, 1913, plaintiff in the above entitled action, Westinghouse

Electric and Manufacturing Company, filed its complaint and bill in the above entitled action wherein it is alleged that defendant Idaho Railway, Light and Power Company was indebted to the plaintiff in the said cause in the sum of forty thousand ($40,000) dollars, or thereabouts, and it is further alleged in said complaint and bill that said defendant was at said time indebted to various other creditors of said defendant corporation in large sums of money and that various suits had been or were about to be filed against said defendant by various creditors of said corporation and attachments thereon issued and levied upon the property of said defendant and that said defendant corporation had defaulted in the payment of its debts and was unable to pay the same and was insolvent, all of which will appear more specifically from the allegations of said complaint which are hereby referred to and by reference made a part of this petition for such purpose only; and in said complaint and bill the plaintiff did further pray by reason of the allegations therein set forth for an order of this Court appointing a Receiver to take possession of all of the properties of the defendant corporation, preserve and maintain and operate the same for the protection and benefit of the creditors of said corporation, as their rights might appear; and thereafter on or about said 23rd day of December, 1913, and after answer filed in said cause, which is also referred to and by such reference made a part of this petition, said Court by order duly and regularly given and made, granted said prayer of said

complaint for the appointment of a Receiver of the properties of said defendant corporation and by said order appointed O. G. F. Markhus Receiver of the properties of said defendant corporation hereinbefore and in said complaint described and thereupon said O. G. F. Markhus qualified as such Receiver by giving the bond required by order of said Court and by filing in said Court his oath of office and said bond was thereupon approved by said Court and said O. G. F. Markhus thereupon became and ever since has been and now is the duly appointed, acting and qualified Receiver of the said defendant Idaho Railway, Light and Power Company and of the properties thereof.

IV.

That in the month of January, 1914, the Guaranty Trust Company of New York, a corporation, brought its bill of equity in this Honorable Court against the said Idaho Railway, Light and Power Company, a corporation, and other defendants, which being action number 470 in equity in this Court, wherein the plaintiffs therein alleged the issuance and sale of bonds of said corporation in the sum of seven million, two hundred and fifty-five thousand ($7,255,000) dollars secured by mortgage upon property of said corporation, fully set out and described in said bill of complaint, which said mortgage is alleged to have been made, executed and delivered to the said Guaranty Trust Company of New York, plaintiff in said cause, on the 1st day of December, 1911, and further alleging default in the per-

formance of certain conditions and covenants of said mortgage and that the whole of said issue of said bonds so outstanding of the alleged face and par value of seven million, two hundred and fifty-five thousand ($7,255,000) dollars, with interest thereon from the 1st day of December, 1913, at the rate of five per cent. (5%) per annum, to the time of the filing of said bill in equity, was due and payable thereon, and praying that the whole of said property described in said bill of complaint be declared by the Court to be subject to the alleged lien of said mortgage and that said mortgage be foreclosed and said property sold in one parcel under decree of said Court and that the par and face value of said bonds issued and sold as alleged in said complaint, together with interest thereon, be paid from the proceeds of said sale.

V.

Your intervenor hereby makes reference to the original bills of complaints in the respective actions hereinabove entitled and prays leave to refer to the same as exhibits thereof to the same effect as if the said bills of complaint, or copies thereof, were attached hereto or filed herewith or stated at length herein.

VI.

Your intervenor further shows to your Honors that it has an interest in the said property of said Idaho Railway, Light and Power Company, described in said bill of complaint and in said cause of the Guaranty Trust Company of New York, plaintiff, vs.

said Idaho Railway, Light and Power Company et al., defendants, in which it claims an equity and prays this Honorable Court to declare said interest and claim to be superior in right to the interest or claim or lien of said Guaranty Trust Company of New York, plaintiff in said action, in or to or upon any of the property described in said bill of complaint or the proceeds thereof; and, in this behalf, intervenor alleges and shows to said Court as follows:

That in or about the months of March, April and May, 1913, to-wit, between the dates of the 18th of March and about the 30th day of May, 1913, the intervenor herein, John A. Roebling's Sons Company of California, sold and delivered to defendant herein, Idaho Railway, Light and Power Company, a corporation, merchandise, to-wit, copper wire of the value of $38,577.17, which sum said defendant agreed to pay for the same in cash. That the particulars of said account, the quality and amount of said material, the date of sale thereof and the price which the defendant agreed to pay for the same are more particularly set forth in a statement of said account, a copy of which is hereto attached and referred to and by such reference made a part of this petition. That the sum of $17,519.80 has been paid on account of said indebtedness and no more, and the balance of said sum, to-wit, the sum of $21,057.37 together with the sum of $946.26 interest thereon from date of said sale is now due, owing and unpaid from said defendant to this intervenor.

VII.

That your intervenor claims a preference in regard to said claim and that the said debt of defendant to this intervenor, as herein set forth, should be preferred in order of payment either out of the income property of said defendant in the possession and under the control of said Receiver or out of the proceeds of the sale thereof as against the claims of mortgage bond holders and other creditors of said defendant; and your intervenor alleges that the facts upon which it bases this claim for preference over other debts and mortgage bonds of said defendant are as follows:

That the said merchandise and material and supplies sold by intervenor to said defendant, as herein alleged, consisted of copper wire to be used in the construction, maintenance and repair of some of the electric or power transmission lines of said defendant, above referred to, and at the time of the sale thereof the said wire was necessary for use of said defendant in the construction, alteration or repair of said power transmission lines of said defendant and that said wire was actually used in the construction and repair, and is still being used in the maintenance and operation of said electric or power transmission systems of said defendant and all of the same is and at all times since the sale thereof was necessary to the continued maintenance and operation of the power transmission systems of the defendant, and the earnings of said property in the possession of said Receiver or the portion thereof in the construction of

which the material herein referred to was used, are derived from the use of said material so sold to defendant, as herein alleged, and without which said properties could not be operated or any earnings derived therefrom.

That all of said material and supplies sold, furnished and delivered to said Idaho Railway, Light and Power Company, as herein alleged, were necessary for the use of said corporation in keeping and preserving the said mortgaged property, or some part thereof, in operative condition and were necessary to the maintenance and operation thereof, and said material and supplies did thereby enhance the value of said property and added to the security of the bond holders thereof and said account of said intervenor for said material and supplies was one of the current debts and expenses of the maintenance and operation of said property.

VIII.

Further in this behalf, your intervenor alleges and respectfully shows to said Court that said material and supplies so furnished, as herein alleged, to said Idaho Railway, Light and Power Company and used in the repair, maintenance and operation of defendant's properties, as described herein and in said bills of complaint above referred to, were of such character as to entitle said intervenor, under the laws of the State of Idaho, to claim and assert a mechanics lien upon the property of said defendant, Idaho Railway, Light and Power Company, described herein and in said bills of complaint in said above entitled

actions, superior in right and order of precedence of payment to the alleged lien of the said mortgage given to secure said bonded indebtedness described in said complaint for foreclosure thereof; and that said intervenor did not file any lien upon said property under the laws of the State of Idaho for the reason that upon the request of said Idaho Railway, Light and Power Company and by agreement made between your intervenor and said last mentioned corporation on or about the 20th day of May, 1913, to the effect that if your intervenor herein should and would refrain from filing and asserting a mechanics lien upon the property of said corporation, the Idaho Railway Light and Power Company, for the amount and value of said material and supplies herein described, the said Idaho Railway Light and Power Company, would and did waive the failure to file and assert said lien and would treat and consider the amount of said claim for the value of said material and supplies as a superior and preferred claim upon the said property to the same extent as if a lien were filed and asserted thereon under the laws of the State of Idaho, and that said Idaho Railway Light and Power Company, its officers and agents, in consideration of defendant failing and refraining from filing said lien, promised and agreed to pay for said material and supplies promptly and as a preferred claim out of the income and receipts of said corporation.

IX.

Your intervenor further shows and represents to your Honors that large sums of money received by

said Idaho Railway Light and Power Company as income from the operation of the properties of said corporation subsequent to the sale and delivery thereto by said intervenor of the material and supplies herein described, have been diverted from the funds of said corporation available for the payment of said accounts of this intervenor as follows: That subsequent to the sale and delivery of the material and supplies herein referred to, the said Idaho Railway Light and Power Company has paid interest upon the said mortgage bonds held by the said Guaranty Trust Company of New York, an amount which your intervenor is informed and believes and therefore alleges to be the interest thereon for the period of one year, to-wit, the sum of three hundred and sixty-two thousand, seven hundred and fifty ($362,-750) dollars, and that the said sum of money so paid as interest upon said mortgage bonds, or so much thereof as was necessary for payment of current indebtedness for material and supplies should have been used and applied by said corporation to pay its current expenses for maintenance and operation and repair of its properties described in said complaint, including the account of your intervenor herein; but on the contrary, and notwithstanding the fact, that the material and supplies so sold and delivered by intervenor , as herein alleged, to the said Idaho Railway Light and Power Company has been added to the property of said corporation and has increased the value thereof and the security of the holders of said mortgage bonds to the extent of the value of said

material and supplies so sold and delivered, the income and revenue derived from the operation of said properties, and due in part to the use of the said material and supplies, has been by said corporation paid to the said Guaranty Trust Company of New York, as trustee on account of interest upon said bonded indebtedness.

X.

The intervenor further and upon information and belief shows and represents to said Court that if the properties, estates, premises, rights, contracts, privileges, equipment and franchises, described in the said bill of complaint of said Guaranty Trust Company of New York, trustee herein, be declared subject to the lien of said mortgage set forth and described in said bill of complaint and the same be foreclosed and sold by decree of this Court as prayed for in said complaint, the same could not be sold for a sum sufficient to discharge and pay the mortgage bond indebtedness claimed and alleged in said complaint of said Guaranty Trust Company of New York, trustee, to be due and payable under said mortgage and in this respect your intervenor alleges that it is without adequate remedy at law for the injury complained of in this bill of intervenor, and therefore seeks the equitable intervention of this Honorable Court.

In consideration whereof and inasmuch as your intervenor is without remedy at law, and can only have relief in a court of equity, your intervenor prays the aid of this Honorable Court as follows:

1. That it may further please your Honors to grant an order herein directing that upon the filing of this bill of intervention, copies of the same may be served upon and delivered to the solicitors of the respective parties to said above entitled causes within such reasonable time as may be fixed by your Honors, and that the complainants and defendants therein have such time as may be fixed by this Honorable Court within which to appear and answer all and singular the matters hereinbefore stated as fully and particularly as if they were thereunto duly interrogated but not under oath; answer under oath being hereby expressly waived.

2. That it be declared, adjudged and decreed that the said Idaho Railway Light and Power Company is indebted to your intervenor in the sum of $21,-057.37, as alleged herein, and that the said claim and account of your intervenor for said sum of $21,-057.37 be by this Honorable Court declared and determined to be a preferential claim against said Idaho Railway Light and Power Company and that the same be further declared to be a lien upon the property of said company, herein and in said bill of complaint of said Guaranty Trust Company of New York, trustee, more fully described, and that the said claim and lien of your intervenor be declared to be a first and prior lien thereon and superior to any lien or claim of right, title or interest of said Guaranty Trust Company of New York, trustee, plaintiff in said above entitled action, or of any of the owners or holders of said bonds issued under said

mortgage to said Guaranty Trust Company of New York, trustee, or of any other persons or parties or claimants herein.

3. That said Receiver, O. G. F. Markhus, be directed to pay said account, and the whole thereof, from the income received by said Receiver from the operation of the said properties described and referred to herein, if said income be sufficient for said purpose.

4. That if the said properties described in said bill of complaint of said Guaranty Trust Company of New York, be sold under any decree of foreclosure of this Honorable Court, it be adjudged, declared and decreed and that the said claim and account of your intervenor in the sum of twenty-one thousand and fifty-seven and 37-100ths ($21,057.37) dollars be paid and the said Receiver be directed to pay the same and the whole thereof from the proceeds of said sale before applying any portion thereof in payment of the claims of said mortgage bond holders described in said bill of complaint of said Guaranty Trust Company of New York, trustee, herein.

5. That your intervenor may have such other and further relief in the premises as may be just and equitable and as to your Honors may be deemed meet.

BEVERLY L. HODGHEAD,
Solicitor for John A. Roebling's Sons Company of California, a corporation, Intervenor.

RICHARDS & HAGA,
McKEEN F. MORROW,
of Counsel.

State of California,
City and County of San Francisco,—ss.

S. V. MOONEY, being first duly sworn, deposes and says: I am an officer, to-wit, the President and Manager of John A. Roebling's Sons Company of California, a corporation, intervenor herein, and I have read the foregoing bill of intervention and know the contents thereof and that the same is true of my own knowledge except as to the matters which are therein stated on information or belief and as to those matters I believe it to be true.

S. V. MOONEY.

Subscribed and sworn to before me this 21st day of March, 1914.

LYDA COHN,
Notary Public in and for the City and County of San Francisco, State of California.

(Seal)

Lodged in Clerk's office March 25, 1914 and filed March 25, 1914.

A. L. RICHARDSON, Clerk.

(Title of Court and Cause.)

STIPULATION OF FACTS ON BILL OF INTERVENTION OF JOHN A ROEBLING'S SONS COMPANY OF CALIFORNIA.

It is hereby stipulated by and between John A. Roebling's Sons Company of California, hereinafter styled Intervener, and O. G. F. Markhus, as Receiver for Idaho Railway Light and Power Company, hereinafter referred to as the Railway Company, that the

Intervener need not answer the Bill of Complaint in this cause, or in cause No. 468, with which this cause is consolidated, nor need the Receiver answer the Bill in Intervention, and its rights shall not be in any way prejudiced by failure to so answer.

The allegations of the address to the Court and of Paragraphs I, II, III, IV, V and VI of said bill in intervention are admitted and agreed to be true and correct save and except the claim of preference asserted in said Paragraph VI is not to be regarded as foreclosed by this admission.

With respect to the remaining allegations of said Petition in Intervention, the facts are agreed to be as follows:

That between the 18th of March, 1913, and the 30th of May, 1913, the intervenor sold and delivered to the Railway Company which was then a going concern, the supplies and material mentioned in its Bill in Intervention, and scheduled in the exhibit attached thereto, for which said supplies and material the Railway Company agreed to pay the sums specified in said exhibit. That it was intended and agreed between the parties that the sale should be a cash transaction within ordinary commerical usage, and that the price thereof should be paid by the Railway Company, on bills as rendered within thirty days from the delivery of the various items specified. That, as stated in Paragraph VI of said Bill in Intervention, no part of such price has been paid by the said Railway Company or by its receiver, save and except that the Railway Company paid, prior to the

appointment of receiver, the sum of $17,519.80 on account, and there is due as a balance the sum of $21,057.37, together with $936.26 interest, as stated. That the intervener sold said supplies and material on the open current account of the Railway Company in the belief and in the intention, on the Intervener's part, that the same should be paid out of current operating income.

That during the period when said supplies were furnished, the said Railway Company was setting up reserves from its earnings and from the proceeds of sale of its bonds to pay bond interest. That the interest accruing upon the bonds of said Railway Company on June 1st, 1913, was $165,750.00. That in the six months preceding that date the following bond interest reserves from said sources were set up.

Dec. 1912—deposit reserve.....	$ 24,345.83
Jan. 1913—deposit reserve.....	26,746.00
Feb. 1913—deposit reserve.....	25,545.65
Mar. 1913—deposit reserve.....	31,029.16
April 1913—deposit reserve.....	26,916.66
May 1913—deposit reserve.....	1,166.70
Total	$135,750.00

That the balance of the sum required to meet such interest, to-wit, $30,000.00 was borrowed May, 1913, on the Company's note, from Kissel, Kinnicutt & Company, and in addition to the foregoing interest reserves the Railway Company on April 1, 1913, paid from its earnings the interest on its underlying bonds of the Boise & Interurban Railway Company,

amounting to $26,825.00, and on June 1 the interest on the bonds of the Boise Railroad Company, amounting to $9,725.00. That of the foregoing interest reserves about $79,000.00 was obtained and set up from the earnings of the Company during said period, and $56,750.00 from the proceeds from the sale of bonds.

That at the time these supplies and this material was furnished, the Railway Company was engaged in the construction of a transmission line approximately 30 miles in length from its central station at Swan Falls on Snake River to the pumping plant of the Gem Irrigation District, also on the Snake River, in Owyhee County, Idaho, with a branch extension four miles in length from a point about midway on said line to the so-called Guffey pumping station in Owyhee County, Idaho. Prior to this time there had been no transmission line between these points.

That before the construction of this line the Railway Company and its predecessors in interest had been for over ten years generating power at its Swan Falls plant, and had a transmission line extending from such plant to the mining districts in and around Silver City in Owyhee County, Idaho, and another transmission line to the cities of Nampa, Caldwell and Boise in Canyon and Ada counties, Idaho. That during the fall of 1912 and the winter of 1913 it was enlarging the capacity of its Swan Falls plant by replacing three 300 KW generating units by two 1250 KW units, with the foundations, wheel pits, gates and tail races for two additional 1250 KW units to

be installed in the future. That this line, then under construction, was constructed from the Swan Falls station for the purpose of serving irrigation customers with whom contracts had been made, having a present estimated demand of about 2,000 horse power, and an ultimate estimated demand of about 6,000 horse power. That these contracts were made with a view to utilizing the increased capacity of the Swan Falls central station as thus enlarged. The Gem District line was constructed direct from the station to the points of use, and did not branch from either of the pre-existing lines.

That at the same time that this Gem District line was under construction the Railway Company was the owner of a controlling interest in the stock of the Idaho-Oregon Light & Power Company, and was likewise heavily interested in the bonds of that Company, which said stock and bonds were pledged as collateral trust security under the mortgage to the plaintiff, Guaranty Trust Company, and was consequently interested in its finances and the development of its business and properties. That the Idaho-Oregon Light & Power Company defaulted upon its interest upon its bonds April 1st, 1913, and the Railway Company had offered to the bond holders of said Idaho-Oregon Light & Power Company a plan of reorganization which contemplated, among other things, the maintenance of the Idaho-Oregon Light & Power Company as a going concern and an exchange of the securities of the Companies. That said Idaho-Oregon Company had made various service

contracts, largely for irrigation, involving the construction of a number of extensions from its existing system to various points in Canyon and Washington Counties, Idaho, and Malheur County, Oregon, such extensions being from one to five or six miles in length, scattered over the territory, and being of the character of ordinary service extensions such as any Power Company engaged in the conduct of its business as a public service corporation would be expected and required to make from year to year as its territory developed.

That the material required for such extensions was purchased by the Railway Company and was furnished to the Idaho-Oregon Company under an agreement termed an "equipment trust," by which the Railway Company reserved title to the supplies and material so furnished until the same should be paid for.

That the material and supplies furnished by the intervener, as alleged in its Bill of Intervention, and as described in the exhibit attached thereto, was furnished for and used and devoted by the Railway Company to the following purposes: (The items are identified by the numbers of the invoices as shown in the exhibit to the Bill in Intervention.)

Item No.	*Description*	*Price*
39227-Q	This material was copper wire of the quantity specified in the exhibit, and was used by the Railway Company in the service extensions for the Idaho-	$ 3,439.02

	Oregon Company mentioned above as Equipment Trust Extensions.	
39334-Q	Guy wire, likewise furnished to the Idaho-Oregon Company under said Equipment Trust Extensions.	77.88
40287-Q	Wire used in the installation of the new or replacement units in the Swan Falls plant hereinbefore referred to, replacing the old small units.	41.15
40387-Q	Copper transmission wire used in the construction of the Gem District transmission line.	11,612.66
40128-Q	Telephone wire used in the construction of the telephone line on the Gem District transmission line.	142.56
	This item also includes freight	26.06
40150-Q	Transmission wire used in the construction of the Gem District line.	5,319.30
40183-Q	Copper wire used in the construction of the Gem District line.	5,912.72
40445-Q	Copper wire used in the construction of the Guffey branch of the Gem District transmission line.	616.03

40440-Q	This material was furnished for use in connection with general service extensions of the Railway Company in its distributing system in and around the unincorporated village of Eagle in Ada County, Idaho.	1,121.15
40750-Q	These supplies were furnished by the Railway Company to the Idaho-Oregon Company under the Equipment Trust Agreement above mentioned.	1,428.57
40744-Q	Wire used in the installation at the Swan Falls plant of the new units replacing the small units.	23.95
41849-Q	Wire furnished by the Railway Company to the Idaho-Oregon Company under the equipment trust agreement.	1081.30
41858-Q	Copper-clad steel wire used in the construction of the Gem District transmission line, either on the power line or on the telephone line connected therewith and erected on the same poles.	2490.94
41869-Q	Wire furnished by the Railway Company to the Idaho-Oregon Company under the equipment trust agreement.	4519.87

41979-X	Wire used at the Swan Falls plant in the installation of the new units replacing the small units.	26.72
4 MHD bare copper wire.	Wire used in the construction of the Guffey branch of the Gem District transmission line.	697.29

All of the said wire has actually been delivered by the interveners to the Railway Company, and devoted by the Railway Company to the purposes above specified, and is in use by the Railway Company, (or by the Idaho-Oregon Company under said equipment trust agreement), as a part of its existing system, and has become a part of the Railway Company's system, has enlarged the same, and has contributed to the earnings and to the value of the properties and the security of the bonds, and said material is and was necessary to the continued maintenance and operation of the respective parts of said property for which the same was supplied and in which it is used.

For the purposes of this hearing it is admitted that the Idaho Railway Company's property will not sell for the amount of the mortgage indebtedness.

BEVERLY L. HODGHEAD,
Solicitor for John A. Roebling's Sons Co. of California, Intervener.

JOHN F. MacLANE,
Solicitor for Receiver.

Endorsed: Filed June 19, 1914.
A. L. Richardson, Clerk.

(Title of Court and Cause.)

CROSS-BILL OF I. P. MORRIS COMPANY AGAINST GUARANTY TRUST COMPANY OF NEW YORK, TRUSTEE, IDAHO RAILWAY, LIGHT AND POWER COMPANY, AND O. G. F. MARKHUS, RECEIVER OF IDAHO RAILWAY, LIGHT AND POWER COMPANY.

To the Honorable, the Judges of the District Court of the United States for the District of Idaho, Southern Division:

And now comes the above named defendant, I. P. Morris Company, and, by leave of this Honorable Court first had and obtained, files this its cross-bill herein against the plaintiff Guaranty Trust Company of New York, Trustee, and the defendant Idaho Railway, Light and Power Company and O. G. F. Markhus, Receiver of said Idaho Railway, Light and Power Company. And thereupon this cross-complainant shows and alleges:

I.

That at all the times hereinafter mentioned this cross-complainant was and now is a corporation duly organized and existing under the laws of the State of Pennsylvania, and is a citizen of said State, and a resident of the Eastern District of said State of Pennsylvania.

That the said Guaranty Trust Company of New York, Trustee, plaintiff in the original suit, but one of the defendants to this cross-complainant's cross-bill, now is and during all the times hereinafter mentioned was a corporation organized under the laws

of the State of New York, and is a citizen and resident of the State of New York with its principal place of business in the City of New York.

That at all the times hereinafter mentioned the defendant Idaho Railway, Light and Power Company (hereinafter sometimes called the "Railway Company") was and now is a corporation organized and existing under the laws of the State of Maine, and is a citizen of said State and a resident of the District of Maine, and is and has been doing business in the State of Idaho under and by virtue of a compliance with the laws thereof relative to foreign corporations doing business in such State.

That the said O. G. F. Markhus now is and ever since the 23rd day of December, 1913, has been the duly appointed, qualified and acting Receiver of the said Idaho Railway, Light and Power Company, having been appointed Receiver of said corporation in a suit brought in the United States District Court for the District of Idaho, Southern Division, by the Westinghouse Electric and Manufacturing Company, a corporation, against the said Idaho Railway, Light and Power Company.

II.

That on the 14th day of January, 1914, the said Guaranty Trust Company of New York, Trustee, filed its bill of complaint in this court against the said Idaho Railway, Light and Power Company, Idaho Traction Company, Westinghouse Electric and Manufacturing Company, and E. H. Jennings for the foreclosure of a mortgage or deed of trust, alleged

to cover all the property, real, personal and mixed, of the said Idaho Railway, Light and Power Company; and thereafter such proceedings were had therein that this defendant and cross-complainant I. P. Morris Company was made a party defendant to said suit upon the petition of the said Guaranty Trust Company of New York. And thereafter and on the 25th day of March, 1914, the said Guaranty Trust Company of New York, Trustee, filed its amended bill of complaint in said cause. That said suit is still pending in this court, and for a more particular statement of the relief therein sought by the said Guaranty Trust Company of New York, Trustee, and the proceedings therein had, reference is hereby made to the records and files in said cause.

III.

That on or about the 31st day of October, 1912, this cross-complainant entered into a contract with the said Railway Company, wherein and whereby this cross-complainant agreed to furnish the Railway Company the following machinery, to-wit:

Two 1750 horse-power turbine water wheels to be installed at the said Railway Company's power plant at Swan Falls, Idaho;

One 350 horse-power exciter turbine to be used in connection with said equipment and said power plant;

Two I. P. Morris governors, with central pumping plant, for the main units above mentioned;

One Lumbard governor for the exciter turbine;

One set of spare parts for the main units above mentioned;

One set of spare parts for the main unit governors;

One set of spare parts for the exciter unit above mentioned;

and agreed to do certain work in connection with the installation of said machinery; that such machinery was to be installed and such work performed at what is known as the Swan Falls Power Plant of the Railway Company at Swan Falls, Idaho. That the contract price and the reasonable value of said machinery and the work and labor to be performed by this cross-complainant in installing the same was Forty-four Thousand Five Hundred Dollars ($44,500.00).

That pursuant to such contract this cross-complainant furnished such machinery and performed the work and labor required in connection with the installation thereof, and furnished certain other machinery ordered by the Railway Company and required in connection with the operation of the said Swan Falls Power Plant and the generation of electric energy thereby; that such machinery was all furnished and such labor performed at the special instance and request of the said Railway Company during the year 1913, and within six months prior to the appointment of the said O. G. F. Markhus as Receiver of the said Railway Company.

That the said Railway Company agreed to pay for such machinery and labor in insttallments as follows, to-wit:

Twenty-five per cent. (25%) of the value of each shipment as the same was shipped from the plant or works of this cross-complainant;

Twenty-five per cent. (25%) of the value of each shipment upon its arrival at Swan Falls, Idaho;

Twenty-five per cent. (25%) of the value of each main unit with its auxiliaries after test had been made and units had been found to meet the guarantees;

Twenty-five per cent. (25%), or the final payment, to be made within one hundred twenty (120) days after the receipt of the machinery and equipment at Swan Falls, Idaho.

That the said Railway Company wholly failed to make said payments according to the terms of its said contract, but on or about the 9th day of December, 1913, such machinery and work was accepted by the Railway Company, and it was agreed that there was then due this cross-complainant for and on account of such machinery and labor the sum of Forty-eight Thousand Three Hundred Thirty-five and 37/100 Dollars ($48,335.37); and the said Railway Company thereupon on or about the said 9th day of December, 1913, paid this cross-complainant the sum of Twenty-one Thousand Two Hundred and 66/100

Dollars ($21,200.66) in cash and gave two promissory notes, each for the sum of $13,246.58 and each bearing date the 9th day of December, 1913, one due in three months and the other in six months after date, and each bearing interest at the rate of six per cent. (6%) per annum from date thereof. That on or about the 15th day of January, 1914, a further cash payment of $111.40 was made on said account; that no other or further payments have been made on said account, and that there now remains due and unpaid the two promissory notes aforesaid and $530.-15, not represented by said notes. That the said notes were taken simply as evidence of the indebtedness represented thereby, and said notes were not given or received in payment of the balance of said account, and neither of said notes has been paid.

IV.

That the machinery so furnished by this cross-complainant was used by the said Railway Company in the construction, maintenance and repair of its hydro-electric power plant, situated at Swan Falls on Snake River in Owyhee County, Idaho, and the labor so done and performed by this cross-complainant in connection with the installation of said machinery was in connection with the repair of said hydro-electric power plant; that such machinery and labor was necessary for the use of said Railway Company in the construction, operation, maintenance and repair of said plant, and ever since the installation of said machinery and for several months last past the same has been used by said Railway Com-

pany and is now being used by the Receiver thereof for generating electric current furnished by the Railway Company and by said Receiver to the public and to the communities served by said Railway Company and its Receiver for operating the electric railway lines and cars owned and operated by said Railway Company.

That without such machinery and labor so furnished and rendered by this cross-complainant the Railway Company and its said Receiver would be unable to furnish electric power to its customers and to the communities served by such Company for heating, lighting, or other purposes, or for the operation of its railroad, city and interurban, lines, or for discharging its duties as a public service corporation; and such Railway Company and its Receiver would be unable to maintain and protect the franchises held and enjoyed and described in the amended complaint of the Guaranty Trust Company of New York, Trustee, in its suit for the foreclosure of its mortgage or deed of trust.

V.

That the earnings of the Railway Company ever since the installation of said machinery, and the income and earnings of the property now in the possession of said Receiver, are largely, if not entirely, derived from the use and operation of the machinery so furnished and installed by this cross-complainant; and such machinery and the labor performed by the cross-complainant have greatly enhanced the value of the property of said Railway Company and the es-

tate in the possession of said Receiver. That the income and earnings of the Railway Company and of said Receiver from the machinery so furnished and from the labor so performed by this cross-complainant have been diverted and used for the payment of interest on the bonds issued by the Railway Company under the mortgage or deed of trust sought to be foreclosed by the Guaranty Trust Company of New York, Trustee, as aforesaid. That the earnings from such property aggregate a sum largely in excess of the amount due this cross-complainant, and if the same had been applied to the payment of this cross-complainant's account, as it should in equity and good conscience have been applied, it would long since have fully discharged and satisfied the claims of this cross-complainant, as aforesaid; but the earnings of such property, due to the furnishing of such machinery and the performance of such labor by this cross-complainant, have been diverted and used for other purposes, and particularly for the payment of interest on the bonds secured by the mortgage sought to be foreclosed by said Guaranty Trust Company of New York, and the amount so diverted and misapplied to the payment of such interest is largely in excess of the amount due this cross-complainant.

VI.

That by reason of the premises this cross-complainant claims a prior lien and preferential claim upon the said Swan Falls Power Plant and all the property, rights and franchises of the said Idaho Railway, Light and Power Company, and on the in-

come and earnings of such property, prior and superior to the lien or claim of the said Guaranty Trust Company of New York, Trustee, under the mortgage or deed of trust now sought to be foreclosed against such property. And the earnings of all of said property and the proceeds thereof, in the event of a sale, should first be applied to the payment of the amount due this cross-complainant, as aforesaid; and this cross-complainant should be held and decreed to have an equitable lien or equitable mortgage upon all of the property of said Railway Company, prior and superior to the mortgage or deed of trust of the said Guaranty Trust Company of New York until the full amount of this cross-complainant's claim has been paid and discharged.

IN CONSIDERATION WHEREOF, and forasmuch as this cross-complainant is remediless in the premises according to the strict course of the common law, and can only have relief in a court of equity, this cross-complainant prays this Honorable Court for an order decreeing the claim of this cross-complainant a prior lien and preferential claim upon all the earnings, property, rights and franchises of the said Idaho Railway, Light and Power Company now in the possession and control of said Receiver, and particularly upon the said Swan Falls Power Plant and the earnings thereof, and that the said Receiver be ordered and directed to first pay the amount due this cross-complainant, as aforesaid, either from the earnings and income of the estate in his possession, or from the sale of such or such part of said estate

as may be necessary to raise the money required to satisfy and discharge the claim of this cross-complainant, and for such other and further relief in the premises as may be just and equitable.

And may it please your Honors to grant to this cross-complainant a writ or writs of subpoena and other process to be directed to the said Guaranty Trust Company of New York and to the said Idaho Railway, Light and Power Company and the said O. G. F. Markhus, its Receiver, and each of them, therein and thereby commanding them at a certain time and under a certain penalty, to be therein named, to be and appear before your Honors in this honorable court, then and there singularly and severally to answer all the matters aforesaid, but not under oath, such answer under oath being hereby expressly waived, and to perform such other orders and decrees as to your Honors may seem just and equitable.

I. P. MORRIS COMPANY,
By OLIVER O. HAGA,
Solicitor for Cross-complainant.

J. H. RICHARDS,
MCKEEN F. MORROW,
Counsel for Cross-complainant,
Residence: Boise, Idaho.

United States of America,
District of Idaho,
Southern Division,—ss.

OLIVER O. HAGA, being first duly sworn, deposes and says: That he is solicitor for the cross-

complainant, I. P. Morris Company; that neither the said cross-complainant nor any of its officers or agents reside within the District or State of Idaho, or within Ada County, wherein resides this affiant; that he makes this affidavit in its behalf because of the absence from the State of its officers and agents; that he has read the foregoing cross-bill and knows the contents thereof, and he believes the facts stated therein to be true.

OLIVER O. HAGA.

Subscribed and Sworn to before me this 9th day of May, 1914.

(Seal) EDNA L. HICE,
Notary Public.

Endorsed: Filed May 12, 1914.
A. L. Richardson, Clerk.
By E. B. Yarington, Deputy.

(Title of Court and Cause.)

ANSWER ~~TO~~ OF GUARANTY TRUST COMPANY OF NEW YORK, TRUSTEE, TO CROSS-BILL OF I. P. MORRIS COMPANY.

To the Honorable, the Judges of the District Court of the United States for the District of Idaho, Southern Division.

The cross-defendant, Guaranty Trust Company of New York, Trustee, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said cross-bill of the said defend-

ant I. P. Morris Company contained, for answer thereto, or to so much thereof as this cross-defendant is advised it is material or necessary for it to make answer to, says:

I.

That it admits the allegations as to incorporation of the corporate cross-defendants and as to the citizenship and residence of all of said defendants contained in paragraph one of said cross-bill herein.

II.

This answering cross-defendant does not know and has not been informed, save by the said cross-bill, whether or not on or about the 31st day of October, 1912, or at any other time or at all the cross-complainant entered into any contract with the said Railway Company to any effect whatsoever and particularly as to whether it entered into a contract wherein or whereby said cross-complainant agreed to furnish said Railway Company any or all of the machinery, articles or things mentioned in paragraph three of said cross-complaint or agreed to do any work in connection with the installation thereof or that such or any machinery was to be installed or such or any work performed at what is known as the Swan Falls Power Plant of the Railway Company at Swan Falls, Idaho, or at any other place or at all; or that the contract price or the reasonable value of said machinery and work and labor or all or any of them was $44,500.00 or any other sum; or that, pursuant to such contract or at all, said cross-complainant furnished any machinery or performed any work

or labor in connection therewith or furnished any other machinery whether ordered by the Railway Company or not, or required or used in connection with the operation of said Swan Falls Power plant or at all or the generating of electric energy thereby; or that such machinery was furnished or such labor performed at the special instance or request of the said Railway Company during the year 1913 or at any other time or at all or within six months prior to the appointment of O. G. F. Markhus, as Receiver of said Company; or that the Railway Company agreed to pay for any machinery or labor or both the sums of money set forth in said paragraph three at any time or in any installments or at all; or that the said Railway Company wholly or at all failed to make any payments according to the terms of any contract; or that on or about the 9th day of December, 1913, or at any other time, or at all, such or any machinery or work or both were accepted by the Railway Company or that it was agreed that there was then, or at any other time, due said cross-complainant for or on account of any machinery or labor or both or at all the sum of $48,335.37 or any other sum; or that the said Railway Company, on or about the 9th day of December, 1913, or at any other time, or at all, paid to cross-complainant the sum of $21,200.66 or any other sum or gave two or any promissory notes each for the sum of $13,246.58 or any other sum or sums or each bearing date the 9th day of December, 1913, or at any other time, or that one was due in three months or at any other time or that the other was

due in six months, or at any other time, after date, or that each or either or any of them bore interest at the rate of six per cent per annum or at all; or that on or about the 15th day of January, 1913, the further payment of $111.40 or any other sum was made on said account, or at all; or that no other or further payments have been made on said account or that there now remains due or unpaid the said promissory notes aforesaid or any of them or the sum of $530.15 not represented by any notes or at all; or that said notes were taken as evidence of the indebtedness represented thereby or the said notes were not given or received in payment of the balance of any account or that neither of said notes has been paid or any of the other matters set forth in paragraph three of said cross-bill; and this cross-defendant prays that said cross-complainant be required to make strict proof of each and all of the allegations contained in said cross-bill, particularly in paragraph three thereof in relation to the said contract therein referred to and the performance of the same as claimed by the said cross-complainant and of the sums of money therein alleged to be due.

III.

This answering defendant does not know and has not been informed, save by said cross-bill of complaint, whether the machinery so claimed to have been furnished by said cross-complainant was used by said Railway Company in the construction or maintenance or repair of its hydro-electric power plant situated at Swan Falls on Snake River in Owy-

hee County, Idaho, or at any other place, or at all, or that the labor so averred to have been done and performed by cross-complainant in connection with the installation thereof was in connection with the repair of the said power plant; or the said machinery or labor was necessary for the use of said Railway Company in the construction or operation or maintenance or repair of said plant or at all; or that ever since the installation of any such machinery or for any time whatsoever, or at all, the same has been used by the said Railway Company or is now being used by the Receiver thereof for generating electrical current furnished by the Railway Company or at all or by said Receiver to the public or to the communities served by said Railway Company or at all; or by said Receiver for operating said electric railway lines or cars owned or operated by said Railway Company or at all; or that, without such machinery or labor so averred to have been furnished or rendered by said cross-complainant, the Railway Company or its said Receiver would be unable to furnish electric power to its consumers or to the communities served by such Company for heating or lighting or for any purposes or for the operation of its or any railway, city or interurban, lines or for discharging its duties as a public service corporation or at all; or that such Railway Company or its Receiver would be unable to maintain or protect the franchise held or enjoyed or described in the amended bill of complaint of this cross-defendant in its suit for the foreclosure of its mortgage or deed of trust; or any of the other mat-

ters set forth in the fourth paragraph of said cross-complaint and this defendant therefore prays said cross-complainant be required to make strict proof of each and all of the allegations of paragraph four of said cross-complainant.

IV.

This answering defendant does not know and has not been informed, save by said cross-complaint, whether the earnings of said Railway Company since the installation of said machinery as averred in said cross-complaint or that the income or earnings of the property now in possession of the Receiver are largely or at all derived from the use or operation of the machinery so averred to have been furnished or installed by said cross-complainant or that such machinery or the labor so averred to have been performed by the cross-complainant has greatly or at all enhanced the value of the property of said Railway Company or the estate in the possession of said Receiver or that any income or any earnings of the Railway Company or of said Receiver from the machinery so averred to have been furnished or from the labor so averred to have been performed by said cross-complainant have been diverted or used for the payment of interest on the bonds issued by said Railway Company under the mortgage or deed of trust sought to be foreclosed by this cross-defendant or at all, or that there are or have ever been any earnings whatsoever from such property or that if there ever had been any such earnings, the same should in equity or good conscience have been applied upon or

in payment of the account of said cross-complaint or that the earnings of any such property have been diverted or used in any manner whatsoever or particularly that they have been diverted for the payment of interest on the bonds secured by the mortgage sought to be foreclosed by this cross-complainant; or any of the other matters and things set forth in paragraph five of said cross-complaint, and that cross defendant therefore prays that said cross-complainant may be required to make strict proof of each and all of the allegations in paragraph five of said cross-complaint and particularly as to the matter of the earnings and income derived from any of the property of said Railway Company at any time and as to any diversion or misapplication thereof.

V.

This answering cross-defendant denies that said cross-complainant is entitled to a prior or any lien or preference claim on the said Swan Falls Power Plant or upon any of the property, rights or franchises of the said Idaho Railway, Light and Power Company or on the income or earnings of such property and denies that the earnings of all or any of such property or the proceeds of all or any thereof in the event of a sale should first be applied to the payment of the amount claimed to be due said cross-complainant or should be so applied at all and denies that the cross-complainant should be held or decreed to have any lien or equitable or other mortgage upon any of the property of the said Railway Company.

Wherefore this cross-defendant, having fully ans-

wered the cross-bill of the said I. P. Morris Company, prays that the same be dismissed and that this cross-defendant have such other relief as may be just and agreeable to equity and have its costs in this behalf most wrongfully sustained.

GUARANTY TRUST COMPANY OF NEW YORK, TRUSTEE, WYMAN & WYMAN,
Residence: Boise, Idaho,
Its Solicitors.

FRANK T. WYMAN, Counsel.

Endorsed: Filed June 12, 1914.
A. L. Richardson, Clerk.

(Title of Court and Cause.)

In Equity—No. 470, No. 468, Consolidated.

STIPULATION ON FACTS ON CROSS-BILL OF I. P. MORRIS COMPANY FOR PREFERENCE.

It is hereby stipulated by and between I. P. Morris Company, hereinafter styled Morris, and O. G. F. Markhus as Receiver of the Idaho Railway, Light & Power Company, hereinafter referred to as Railway Company, that the Receiver need not answer said cross-bill or claim for preference, and his rights shall not in any way be prejudiced by failure to so answer.

The allegations in the address to the court and paragraphs I, II and III of said cross-bill or claim for preference are admitted to be true and correct, save and except that the material mentioned in paragraph III thereof was received by the railway company prior to the first day of June, 1913, but the installa-

tion thereof was not finally completed or the work accepted until within six months of the appointment of said Markhus as Receiver. That attached hereto, marked Exhibit "A", and made a part of this stipulation, is a copy of the contract (without specifications) under which such material was furnished and labor performed by Morris.

That for the purpose of determining whether the claim of said Morris is a preferential claim, the following additional facts are admitted to be true by the parties to this stipulation, and further proof thereof is waived:

(a) That the items mentioned in the cross-bill or in the contract (Exhibit "A") as spare parts are still retained by said Morris and have not been delivered to the Railway Company or its Receiver. That the value and cost of said spare parts is $5,-138.00.

(b) That on the item of $530.15 the Railway Company has and is entitled to a credit of $179.10.

(c) That in the fall of 1912, and prior to October 31st of that year, the Railway Company, being the owner of the Swan Falls Power Plant, determined to improve, enlarge and in part rebuild the same by removing three 300 K. W. generating units and replacing the same by two 1250 K. W. generating units, with the necessary foundation, wheel pits, gates and tail races, all so arranged and placed that two additional 1250 K. W. can be installed in the future. That the Railway Company was at that time and ever since has been a public service corporation, engaged

in the generating, selling and delivering of electric current for heating, lighting and power purposes, and the enlargement and improvement made at the Swan Falls plant under the Morris contract was for the purpose of putting the Railway Company in a condition to better serve its customers and to supply the increasing demand for electric current for the purposes stated.

(d) That under the contract, hereto attached and referred to in the cross-bill, Morris manufactured and supplied the machinery therein described, and furnished the same to the Railway Company, making deliveries thereof in the spring of 1913, and prior to June 1st of that year, with the exception of the spare parts which, as heretofore stated, are still in the possession of Morris. That the work was carried on with such progress that the first enlarged unit was completely installed and placed in operation about the first of June, 1913, and the second enlarged unit was installed and placed in operation before June 20, 1913, and the remainder of the work was done during the summer of 1913 and was completed by Morris to the extent required under its contract in the latter part of September, 1913, and on December 9, 1913, the Railway Company formally accepted the machinery supplied and work done by Morris, and the payments alleged in the bill were then made; and no other payments on account of such contract or work have been made by the Railway Company or the Receiver, except as stated in the cross-bill or claim of preference of Morris.

(e) That there is due to Morris from the Railway Company the amount expressed in the two promissory notes mentioned in the cross-bill, to-wit, $26,493.16, with interest at six per cent. (6%) from date, and the sum of $351.05 on open account, all subject to whatever determination the court may make as to the liability of the Railway Company as to the spare parts not delivered, of the cost and value of $5,138.00. And it is agreed that the notes were simply taken as evidence of indebtedness and not in payment, and that said notes have not been paid.

(f) That the Swan Falls Plant, from the time such enlargements and improvements were made, has been running continuously at its full capacity, except when shut down for necessary repairs or because of accidents, in order to supply the demand on the company and its Receiver for electric current.

(g) That the total rate reliable capacity of the Swan Falls plant is 4200 K. W., of which 2500 K. W. is generated by the machinery furnished by Morris; such power plant is the only plant owned and operated directly by the Railway Company, and its net earnings from its power business, in the proportion that 25 bears to 42, are attributal to the capacity generated by the machinery furnished by Morris. The Railway Company in addition to its power properties is owner of about seventy miles of electric railway line to which it furnishes power and from the operation of which it also receives passenger and freight receipts. The operation of the traction and power properties of the Railway Company from November

1, 1912, to January 1, 1914, produced the following net results:

Month	*Light and Power Net*	*Traction Net*	*Total Net from All Sources*
1912			
November	$12,801.93	$ 9,024.82	$21,826.75
December	10,734.39	8,114.26	18,848.65
1913			
January	11,034.44	7,608.94	18,643.38
February	8,931.80	7,828.75	16,760.55
March	8,597.08	10,000.55	18,597.63
April	6,730.10	9,383.25	16,113.35
May	10,083.90	13,165.11	23,249.01
June	10,228.13	12,467.41	22,695.54
July	10,914.12	12,820.24	23,734.36
August	10,326.11	10,612.11	20,938.22
September	13,975.68	16,799.98	30,775.66
October	15,393.78	9,722.54	25,116.32
November	8,512.35	9,711.13	18,223.48
December	10,129.00	7,488.76	17,617.76

(h) That between November 1st, 1912, and December 23rd, 1913, the Railway Company paid from its earnings in interest on bonds of the Boise & Interurban Railway Company, one of its constituent traction properties, on April 1st, 1913, $26,825.00 and on October 1st, 1913, $26,825.00. That it paid as interest on the bonds of the Boise Railroad Company, Limited, another constituent traction property owned by the Railway Company, on December 1st, 1912, $9,725.00, on June 1st, 1913, $9,725.00, and on December 1st, 1913, $9,725.00. And it paid for

the benefit of the sinking fund of the bonds issued by said Boise Railroad Company on December 1st, 1912, the sum of $5,000.00, and on December 1st, 1913, the sum of $5,000.00. That on December 1st, 1912, it paid as interest on the bonds of the Railway Company $146,075.00. That on June 1st, 1913, it paid as interest on the bonds of the Railway Company, $165,750.00.

(i) That in addition to the sums so paid out from its earnings for interest and for sinking funds, the Railway Company has paid out of its earnings large sums for permanent improvements and equipment, adding materially to the value of the property securing the bonds of the Railway Company issued under the trust deed or mortgage to the plaintiff, Guaranty Trust Company of New York.

(j) That on or about December 19, 1913, one E. H Jennings attached bank deposits of the Railway Company to the amount of approximately $18,000.00 for a debt of that company, which attachment still remains in full force.

(k) It is agreed that the machinery furnished to the Railway Company is worth the price thereof and that it has become a part of the corporate properties and assets of the Railway Company, and has added to the security of the plaintiff's mortgage by an amount equal to such cost and value, and that such machinery is necessary to the continued operation of the Railway Company's system, and that without it it could not perform its duties to the public; and that said material was furnished and work performed by

Morris for the Railway Company in the belief and intention that the same, unless otherwise provided for by the Railway Company, would be paid for out of the operating or current income thereof.

(l) That the operation of the traction and power properties of the Railway Company under the Receiver since the end of the year, 1913, has produced the following net results:

Month	*Light and Power*	*Traction*
1914	*Net*	*Net*
January	$ 4,976.98	$8,142.31
February	5,027.66	5,597.69
March	6,025.07	8,185.59
April	10,750.32	8,555.18
May	14,294.08	*8,500.00

*Estimated.

(m) That the earnings of the Railway Company from sources other than its traction and power properties, between November 1st, 1912, and April 30th, 1914, aggregate $6,037.59.

(n) That for the purpose of a decision on the preference claimed by Morris, it is admitted that the Railway Company's properties will not sell for the sum of its first mortgage indebtedness.

Dated June 16, 1914.

RICHARDS & HAGA,
McKEEN F. MORROW,
Solicitors for Defendant, I. P. Morris, Company.
CAVANAH, BLAKE & McLANE,
Solicitors for O. G. F. Markhus, Receiver of Idaho Railway, Light & Power Company.

EXHIBIT "A."

Contract between
IDAHO RAILWAY, LIGHT & POWER COMPANY,
and
I. P. MORRIS, COMPANY,
with specifications covering
2 1750 H. P. Main Units
and
1 300 H. P. Exciter Unit
with complete governing mechanisms.

This Agreement, made this thirty-first day of October, Nineteen hundred and twelve, by and between Idaho Railway Light and Power Company, a corporation organized and existing under the laws of the State of....., hereinafter called the Purchaser, party of the first part: and The I. P. Morris Company, a corporation organized and existing under the laws of the State of Pennsylvania, hereinafter called the Contractor; party of the second part;

Witnesseth: That for and in consideration of the payments hereinafter expressed being made to the Contractor by the Purchaser at the times and in the manner hereinafter set forth, the Contractor agrees to design, construct and deliver to the Purchaser, free on board cars at Murphy, Idaho, the following machinery, to-wit:

Two (2) 1750 horse-power turbine water wheels to be installed at Swan Falls, Idaho;

One (1) 350 horse-power exciter turbine;

Two (2) I. P. Morris governors, with central pumping plant, for main units;

One (1) Lombard governor for the exciter turbine;

One (1) set of spare parts for main units;

One (1) set of spare parts for main unit governors;

One (1) set of spare parts for exciter unit;

all as more specifically described and enumerated in the specifications hereto attached, and which are hereby made a part of this contract; the terms of such specifications to be read into this contract as though each of its provisions were enumerated herein.

Terms Used.

In this contract the word "Work" or "Works" shall, unless the context require a different meaning, mean the whole of the work and the materials, matters and things required to be done, furnished and performed by the Contractor under this contract, in order to complete the construction of the items enumerated herein.

The word "Engineers" shall mean the Engineers of the Purchaser Viele, Blackwell & Buck, 49 Wall Street, New York City, who have control over the work on behalf of the Purchaser; or, as the case may be, any person especially authorized by them to perform any of the functions or exercise any of the powers hereby allotted to or conferred upon them as such Engineers.

Successors and Assigns.

All covenants and agreements herein contained shall be binding on and extend to the successors of the Contractor and Purchaser respectively.

Labor Machinery.

The contractor will, at his own expense, provide all and every kind of labor, machinery and other plant, materials, articles, transportation and things whatsoever necessary for the due execution and completion of all the work set out or referred to herein, or in the specifications hereunto annexed and forming a part of this contract.

Quality of Work.

All of the work is to be constructed of the best material of their several kinds and finished in the best and most workmanlike manner, as required by, and in strict conformity with the said specifications and with the plans and profile or drawings prepared and to be prepared, as herein provided, to the complete satisfaction of the Engineers, and should any discrepancy arise as to the meaning intended by the specifications, plans and drawings above referred to, or as to the meaning of any part of this contract, the decision of the Engineers thereon shall be final and binding.

Delivery.

It is further understood that time is of the essence of this Agreement and that work on all of the material, machinery, plant, articles and things to be furnished as herein specified, shall be commenced at once, and the Contractor agrees (strikes, fires and acts of God only excepted) to make shipments from the Contractor's shops of the various items as follows:

Speed ring foundation bolts and exciter draft tube, January 1st, 1913;

First main unit and exciter unit speed ring, February 15, 1913;

Second main unit speed ring, March 1st, 1913;

Remainder of first main unit and exciter unit; also first governor, central pumping system and exciter governor, March 15, 1913;

Remainder of second main unit and second governor, April 1st, 1913.

It is also understood that the spare parts included in this contract will be delivered within one (1) year from date; or within three months from notice to proceed with the construction of the spare parts, provided such notice is not given prior to April 1, 1913.

Contractor's Liability for Delay in Delivery.

It is understood and agreed that for each and every day after April 1, 1913, by which the contractor fails to deliver at Contractor's works all of the above apparatus, excluding only the spare parts, the Purchaser shall deduct from the price to be paid, as liquidated damages, the sum of Fifty Dollars ($50.00) for each day of such delay.

PERFORMANCE GUARANTEES:

Main Turbines (Power).

Each main turbine wheel is guaranteed to deliver to the generator shaft seventeen hundred and fifty (1750) horse-power when operating under a head of twenty-one (21) feet and running at a speed of ninety (90) revolutions per minute.

Contractor's Performance Curve Sheet No. 159, attached hereto, shows the excepted performance of the main turbines for heads of sixteen (16) feet, nineteen (19) feet, twenty-one (21) feet and twenty-two (22) feet.

Efficiency.

Contractor guarantees that each main turbine unit, when operating under a head of twenty-one (21) feet and at a speed of ninety (90) revolutions per minute, will have an efficiency of at least:

85% at 1750 horse-power;
81% at 1530 horse-power;
78% at 1310 horse-power; and
68% at 875 horse-power.

Exciter Turbines.

The exciter turbine wheel is guaranteed to deliver to the generator shaft, three hundred and fifty (350) horse-power when operating under a head of twenty-one (21) feet and running at a speed of one hundred and ninety (190) revolutions per minute.

Contractor's perfomance curve sheet No. 160, attached hereto, shows the expected performance of the exciter turbine for heads of sixteen (16) feet, nineteen (19) feet, twenty-one (21) feet and twenty-two (22) feet.

Efficiency.

Contractor guaranteees that the exciter turbine, when operating under a head of twenty-one (21) feet at a speed of one hundred and ninety (190) revolutions per minute, will have an efficiency of at least:

84% at 350 horse-power; and
77% at 260 horse-power.

Rejection of Runners of Main Units.

If the wheels fail to show a maximum efficiency of at least eighty-three (83%) per cent., or fail to deliver seventeen hundred and fifty (1750) horse-power when operating under a head of twenty-one (21) feet and running at ninety (90) revolutions per minute, the runners shall be subject to rejection at the option of the Purchaser.

In the event of rejection, the Contractor agrees to replace the runners at his own expense, to increase the efficiency or power. All costs for additional tests after the first test shall be borne by the Contractor.

Runner Models.

The Contractor guarantees that each main and exciter turbine runner will be an exact reproduction, on an enlarged scale, of Contractor's experimental runner known by the symbol "O" test report of which is attached hereto and signed by the Hydraulic Engineer of the Holyoke Water Power Company.

The runners for these turbines will be geometrically similar to the test runner "O" described above, the drawings being stepped up by pantograph from the test runner to the sizes required for the respective power of the units.

Design of Draft Tubes.

All the foregoing performance guarantees are made with the understanding that the draft tubes for the main units will be constructed by the Pur-

chaser from designs submitted by Contractor and approved by the Engineers.

Operation.

The contractor guarantees all of the work under this agreement against defects due to design, workmanship, or materials, for a period of one year after it has been started into commercial operation. It is understood that the Contractor will not be held responsible for injuries to the machinery caused by foreign substances contained in the water supplied to the turbines, by improper handling by the Purchaser or from the failure of the foundations prepared by the Purchaser.

Approval of Contractor's Drawings.

It is also mutually understood and agreed that all of Contractor's drawings applying to this work are to be submitted to the Engineers of their duly authorized representative for approval and acceptance in writing before the work is put into the Contractor's shops; the approval of the drawings, however, shall not relieve the Contractor from any of his obligations under this agreement, nor from the responsibility for any clerical errors in the drawings.

Inspection.

The Contractor shall at all times permit the Engineers or their duly authorized agent, to freely examine all its plans for said work, and shall permit free access to all parts of its shops where any material which shall be intended to be used in the building of the apparatus covered by this Agreement is

to be made, together with full facilities for inspecting and testing any of the said material.

Inspectors, appointed by the Engineers, shall be given every facility for the examination of all parts of the work at all stages of its progress, whether at the works of the contractor or of parties furnishing material of any kind to be used on this work, or doing any of the work herein specified. They shall be fully advised by the Contractor concerning the progress of the work both in the shops and at outside establishments, and informed as to times and places where tests are to be conducted. All necessary movements of parts to facilitate measurements and examination shall be made by Contractor for them, and every assistance given them for fully accomplishing this.

Any workmen or employes of the Contractor who shall wilfully violate any of the requirements of this contract or act in a disorderly manner, or refuse to comply with reasonable requests to carry out the work in a satisfactory manner, or who shall be considered incompetent, shall upon proper representation of inspectors, be dismissed from the work and not at any future time be employed thereon.

Changes to Apparatus.

It is also agreed that any changes in or additions to the apparatus and parts thereof included in this contract and the accompanying specifications, which may be agreed upon between the Engineers and the Contractor during the progress of said work shall become effective and accepted by the contractor and

paid for by the Purchaser at a price to be previously agreed upon in writing by and between the Contractor and the Engineers; provided, however, that in case and whenever such changes or additions involve the abandonment of work commenced or in process of completion, the Purchaser shall adequately reimburse the Contractor for all losses or labor and material and for any expense incurred in making changes. If changes involve in increase of cost in the work the increase will be borne by the Purchaser; if a decrease, it will be borne by the Contractor.

Extension of Time.

It is expressly agreed that the time herein specified within which the said work shall be done shall not be increased by reason of such changes or additions, nor shall any claim be made by the Contractor for any allowance in time by reason of any such changes or additions, or by reason of any other act of the Purchaser, unless the allowance in time shall have been claimed by the Contractor in writing immediately upon receipt of any order for a change from the Engineers, or immediately after the doing of any other act by the Purchaser by reason of which an allowance in time will be claimed, and the amount of any such allowance in time shall have been agreed upon in writing between the parties hereto.

Expense of Unloading from Cars and Erection.

It is further understood and agreed that the Contractor under the terms of this Agreement is not to bear the expense at the power house of unloading

from cars, transporting from cars to power house, or placing, assembling, erecting, or adjusting any of the aforesaid work, machinery or parts thereof, but the Contractor does hereby agree to furnish an erecting superintendent for the rate of ten dollars ($10.00) per day, plus all traveling and living expenses from the date of his leaving Contractor's work until his return thereto. The erecting superintendent shall be at the Purchaser's power house on the arrival of the first main unit, and shall remain there and superintend and direct the men who shall be furnished by the Purchaser to unload from the cars, erect upon the foundations to be provided by the Purchaser, and adjust all of the work to be furnished by the Contractor, to the end that the machinery may be erected in accordance with the Contractor's drawings, and to the end that the machinery may be adjusted to the requirements of the Contractor in order to meet the guarantees of capacity, efficiency and performance called for under this contract. It is further understood and agreed that the erecting superintendent furnished by the Contractor as aforesaid is to be under the general direction of the Engineers. It is also understood and agreed that Purchaser shall furnish all necessary skilled and unskilled labor, tools, rigging including the use of the power house cranes, and appliances for the safe and efficient handling and erecting of the work, under the personal supervision of the erecting superintendent of the Contractors.

Responsibility for Damages.

It is understood and agreed that the Purchaser is to be responsible for all damages to machinery during the unloading and erection of the work under this Agreement, but that the Contractor will be responsible for the satisfactory quality of the work of erecting, assembly, and adjustment of machinery under this Agreement carried out under supervision of or pursuant to directions of the erecting superintendent aforesaid.

Tests.

As soon as any water wheel unit to be furnished by Contractor shall have been placed in successful operation, it will be tested by and at the expense of the Purchaser, in order to determine whether it meet with the conditions and stipulations of this contract. The efficiencies, outputs and heads of the turbines will be determined in accordance with the specifications.

The generator efficiencies and losses will be taken from tests made at the works of the builders of the electrical apparatus, or from tests made on the generators after installation.

The Contractor reserves the right to have a representative present at all tests of the turbines, the generators and callibration tests on instruments.

Governor Guarantees.

The Contractor guarantees that the governors will meet the requirements of speed regulation as stated in the accompanying specifications.

Arbitration.

To make all tests, an Engineer shall be appointed by the Purchaser and an Engineer shall be appointed by the Contractor. These two shall select a third Engineer, in the event of their being unable to agree of themselves. In case of disagreement as to the selection of the third Engineer, he shall be appointed by the President of the American Society of Civil Engineers. The decision of any two of the Engineers shall be considered final by the party whose contentions are not sustained.

Contractor's Liability for Extra Work.

It is agreed by Contractor that in case it shall be found upon commencement of operation, or at any time after the work shall have been erected, that any part thereof does not in any particular comply with the terms of this Agreement, that in every such case it may and will do any work necessary to make the work furnished hereunder comply in all respects with the terms of this agreement and the said specifications and drawings, at such times and by such methods as will least interfere with the completion and operation of the power plant of the purchaser, and that it will do any and all such work at its own cost and expenses; and in doing such work will save harmless the Purchaser from any cause, or damage to its property or to any of its employees, or to any other person or thing, arising from work carried on by the Contractor on the premises of the Purchaser; it being distinctly understood that nothing herein contained shall prevent the Purchaser from commencing

the use of the said work as soon as it has been erected and is ready for commercial operation and to continue the use of the same in the course of its business, whether the turbines shall in all respects comply with this Agreement and specifications attached hereto, and are entirely acceptable to the Engineers, or not.

Patents.

In order to insure the Purchaser against any possible loss or expense by reason of adverse claims under patents, based upon the use of any of the apparatus or parts thereof covered by this Agreement, the Contractor guarantees that the Purchaser shall not be disturbed in the use of said apparatus and parts thereof by litigation based upon such adverse claim, and to that end the Contractor will at his own expense defend any and all suits or proceedings that may be instituted against the Purchaser for the infringement, or alleged infringement, of any patent or patents, by the use of any of said apparatus or parts thereof, provided such infringement shall consist in the use by the Purchaser in the regular course of its business of said apparatus or parts thereof, and provided the Purchaser gives to the Contractor immediate notice in writing of the institution of suit or proceedings, and permit the Contractor, through its Counsel, to defend the same, and give all needed information, assistance and authority to enable the Contractor so to do; and thereupon, in case of an award of damages, the Contractor will pay such award, and in the case of an injunction against the

Purchaser, the Contractor will pay the Purchaser any loss or damages to his business caused by such injunction.

Payments.

For the performance of this Agreement by the Contractor, the Purchaser agrees to pay to the Contractor, the sum of Forty four thousand, five hundred dollars ($44,500.00), lawful money of the United States.

Payments by the Purchaser on account of work under this Agreement shall be made as follows:

25% of the value of each shipment on delivery at Contractors Works;

25% of the value of each shipment upon its arrival at destination;

25% of the value of each main unit with its auxiliaries, and of the exciter unit with its auxiliaries after test has been made and units have been found to meet the quarantees; such test to be made within sixty (60) days after the units are put into commercial operation;

25% of the total contract price, which is the final payment, to be made within one hundred and twenty (120) days after the receipt of the apparatus at destination.

If, through no fault of the Contractor, test of the apparatus is delayed beyond the sixty-day period mentioned above, the third payment shall be made just as though the tests had been made; such payment, however, is not to relieve the Contractor from his responsibilities as set forth in this Agreement.

For convenience in making payments, the value of each item of machinery included under this contract shall be taken as follows:

Each main unit	$10,791.50
The exciter unit	6,255.00
Each governor for main units	5,375.00
Spare parts for main unit governors	175.00
The exciter governor	774.00
Spare parts for main units	4,000.00
Spare parts for exciter unit	963.00

Optional Wheel.

Contractor agrees to give Purchaser under this Agreement an option for a period of one (1) year from date hereof, on

Two (2) Main units, to be exact duplicates of those described hereunder, delivered f. o. b. Murphy, Idaho, for a price of Twenty One Thousand Five Hundred and Eighty-three Dollars ($21,583.00), and

Two (2) I. P. Morris governor mechanisms for these units, with complete connections to the central pumping system, for a price of Ten Thousand Seven Hundred and Fifty Dollars ($10,750.00).

It is understood and agreed that the apparatus to be ordered under the above option will conform to the attached specifications.

Contractor agrees that the first of these optional wheels, with its governor, will be delivered f. o. b. cars the Contractor's works within four (4) months from the date notice is received to proceed; such de-

livery, however, not to be made earlier than June 1st, 1913.

The second wheel under this option, with its governor, will be delivered two (2) months after the delivery of the first additional wheel.

It is agreed that the terms of payment outlined herein for the main and exciter units, with auxiliaries, will also apply to the wheels under this option.

In Witness Whereof, the parties hereto have caused these presents to be executed in duplicate by their respective officers, duly authorized thereto, the day and year first above written.

I. P. MORRIS COMPANY,
(Signed) H. W. HAND,
Vice-President.

Attest:
(Signed) CHAS. T. TAYLOR, Secretary.

IDAHO RAILWAY, LIGHT & POWER COMPANY,
(Signed) SAMUEL L. FULLER,
Vice-President.

Attest:
(Signed) G. E. HENDEE, Secretary.

Endorsed: Filed June 19, 1914. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

STIPULATION AS TO ANSWERS AND PROOF ON PREFERENTIAL PETITIONS.

It is hereby stipulated by and between all the parties hereto and their counsel that the parties hereto, other than the plaintiff, need not answer cross-bills or intervening petitions claiming preferences in the

distribution of the assets of the receivership estate, nor need the interveners answer the bill or cross-bills in the original consolidated causes, or either of them, and that the issues on the various intervening petitions and cross-bills claiming preferences shall be deemed made up by the said petitions or cross-bills and the answers of the plaintiff, Guaranty Trust Company of New York, thereto.

It is further stipulated that all stipulations of fact on intervening petitions or cross-bills entered into by the receiver and the respective interveners or cross plaintiffs shall be deemed to be evidence not only as against or in favor of the parties to the stipulation, but also as against or in favor of the remaining intervening claimants, it being conceded that the assets of the estate will be sufficient to pay all claims obtaining preferential rights, so that the allowance of one claim will not prejudice the rights of all the claimants as against each other.

Dated, June 10, 1914.

CAVANAH, BLAKE & McLANE,
Solicitors for Receiver.

WYMAN & WYMAN,
Solicitors for plaintiff, Guaranty Trust Co. of New York.

ALFRED A. FRASER,
Solicitor for Idaho Railway and Idaho Traction Companies.

PERKY & CROW,
Solicitors for Westinghouse Electric & Manufacturing Co.

RICHARDS & HAGA,
Solicitors for E. H. Jennings, I. P. Morris Company and John A. Roebling's Sons Company.
FREMONT WOOD, DEAN DRISCOLL,
Solicitors for American Steel Wire Company.
HAWLEY, PUCKETT & HAWLEY,
Solicitors for General Electric Company.

Endorsed: Filed June 15, 1914. A. L. Richardson, Clerk.

(Title of Court and Cause.)

STIPULATION.

Bills in intervention claiming preference in distribution and prior rights to parts of the properties claimed to be covered by the mortgage to the Guaranty Trust Company sought to be foreclosed herein, having been filed in the above consolidated causes, testimony taken, and the same submitted to the Court for its decision, and all parties hereto being desirous to have decisions on such preference rights and other claims of priority adjudicated at this time in advance of the entry of decree of foreclosure or such other decree as may be entered, so as to expedite the final settlement of the receivership estate, and to permit the speedy disposition of appeals if any should be taken from the decree upon such bills in intervention;

It is hereby stipulated, between all parties to said actions and all intervening claimants to preference or priority, that final decree upon all such claims of preference and to priority may be entered by the

Court at this time, with the same effect as if entered either upon or after decree of foreclosure or distribution, or such other final decree as the Court may enter upon the rights of the mortgagee. That this stipulation and the entry of such decree shall be without prejudice to the right of the said Guaranty Trust Company of New York, to take such further proceedings by way of filing supplemental, amended or new bill of foreclosure, or otherwise as it may be advised, but the said decree so entered at this time shall be final and binding (subject to any determination that may be made upon appeal as to the merits thereof) in any such proceedings so taken, and any proceedings so taken by the Guaranty Trust Company shall be without prejudice to the rights of such intervening claimants as established by the decree to be now entered, which said decree shall bind the rights of all parties hereto, as to the matters therein stipulated in any proceeding so taken.

Any such decree adjudicating such claims for preference and prior rights shall be deemed and taken as a final decree so as to permit appeal or appeals, if any be desired, to be taken, without awaiting or depending upon the decree of foreclosure of the mortgage of the Guaranty Trust Company.

WYMAN & WYMAN,
Solicitors for Guaranty Trust Company of New York.

ALFRED A. FRASER,
Solicitor for Idaho Railway, Light & Power Company.

ALFRED A. FRASER,
Solicitor for Idaho Traction Company.
PERKY & CROW,
Solicitors for the Westinghouse Eectric & Manufacturing Company.
RICHARDS & HAGA,
Solicitors for E. H. Jennings, I. P. Morris Company and John A. Roebling's Sons Company.
HAWLEY, PUCKETT & HAWLEY,
Solicitors for General Electric Company.
WOOD & DRISCOLL,
Solicitors for American Steel & Wire Company.
October 10, 1914.

Endorsed: Filed Oct. 10, 1914.
A. L. Richardson, Clerk.

(Title of Court and Cause.)
In Equity—No. 468.

STIPULATION AS TO RECORD ON APPEAL.

The following stipulation shall apply both to the appeal of John A. Roebling's Sons Company of California, a corporation, and to I. P. Morris Company, a corporation. It is also stipulated that all other preferential claimants or parties seeking priority of right in respect to the payment of claims referred to in the final decree in the above entitled cause have refused to join in any appeal therefrom and that the appeal of said John A. Roebling's Sons Company of California and of said I. P. Morris Company from said decree may be allowed by said Court.

For the purpose of condensing the record on appeal

of John A. Roebling's Sons Company of California, a corporation, and the appeal of I. P. Morris Company, a corporation, from the final decree made and entered on the 20th day of December, 1915, in the above entitled cause, it is stipulated as follows:

The original bill was filed herein by Westinghouse Electric & Manufacturing Company against Idaho Railway, Light & Power Company (hereinafter called "Railway Company"), on December 23, 1913, and was docketed as Number 468. The bill, in general form, was a creditor's bill, and prayed for the appointment of a receiver and the administration of the estate of the Railway Company, as an insolvent corporation. Subpoena was issued and the Railway Company answered, generally confessing the allegations of the bill, and consenting to the appointment of the receiver, on the same day, and thereupon the Court appointed O. G. F. Markhus as receiver, and he at once qualified by filing the required oath and bond. The bill, answer and order appointing the receiver will be included within the transcript as part of the record.

On the 14th day of January, 1914, pursuant to leave of Court, Guaranty Trust Company of New York, as trustee under a mortgage executed by the Railway Company to secure an issue of first and refunding sinking gold bonds, filed a bill against the Railway Company and other defendants for the foreclosure of said mortgage, on account of alleged defaults by the Railway Company in the performance of various covenants and conditions of the mortgage.

The property generally described in the bill of the Westinghouse Electric & Manufacturing Company was particularly described in the bill of the Guaranty Trust Company as the property subject to said mortgage. This bill was docketed as Number 470, and the proceedings thereon will be hereinafter referred to as "Cause No. 470."

Said bill for the foreclosure of said mortgage set forth in detail facts showing the corporate capacity of the parties thereto, the jurisdiction of the Court, the execution of the mortgage to secure the payment of $9,095,000.00 of said bonds, the terms and conditions of said mortgage, the breach of covenants, and a detailed description of the property subject to said mortgage, which said description was grouped generally under the following classifications:

I. *Hydro Electric Power Plant at Swan Falls with Properties and Rights Appurtenant Thereto.*
Including:
A. Various enumerated water rights, specified water rights, and
B. 620 acres of land, more or less.
C. Power plant at Swan Falls, Idaho.
D. Two certain transmission lines of electric current known as "Dewey Transmission Line" and various branches thereof, and the Nampa and Boise Transmission Line.
E. Rights of way, licenses, franchises, easements, etc.
F. Certain additional real estate.
G. Electrical equipment.

H. Miscellaneous properties, consisting of ferry boat at Swan Falls Ferry and all miscellaneous properties appurtenant to the properties described in Division No. I.

II. *Properties Formerly Belonging to Boise Valley Railway Co., Limited.*

Including:

A. Railway lines in Boise City and suburbs.

B. Rolling stock.

C. Franchises granted by various cities, villages and counties of Idaho.

D. Various parcels of real estate in and about the City of Boise.

III. *Properties formerly of Boise and Interurban Railway Company, Limited.*

Including:

A. Various railway and transmission lines in and about the City of Boise.

B. Rights, privileges and franchises granted by various described ordinances of the City of Boise, the City of Caldwell, and by the County Commissioners of Canyon County and Ada County of Idaho, and various contracts and leases described in said division.

C. Twenty-three lots or parcels of real estate situated in Canyon and Ada Counties, Idaho, specifically described.

IV. *Properties Formerly of Dewey Electric Light and Power Company, Limited.*

Including:

Electric light plant at Nampa, Idaho, with its machinery, poles, wires, meters, electrical apparatus and equipment, and all franchises granted by certain ordinances of said City of Nampa.

V. *Nampa-Caldwell Extension.*

Including:

Railway between the Towns of Nampa and Caldwell, Idaho, with franchises, equipments and appurtenances thereunto appertaining.

VI. *Properties Formerly of Caldwell Power Company, Limited, and Connected Therewith.*

Including:

A. Electric light and power plant, transmission lines at Caldwell, Idaho, with lands, buildings, machinery, rights and privileges appurtenant thereto.

B. Franchises granted by the City of Caldwell.

VII. *Miscellaneous Properties.*

Including:

Certain lands in the City of Nampa, with buildings, depot, terminal office, sub-station thereon and electrical apparatus therein, and distributing systems at the village of Murphy and at Silver City in Owyhee County, Idaho.

VIII. *Idaho-Oregon Light and Power Company Stock and Bonds.*

Including:

Various stocks and bonds of said Company.

IX. *Properties Formerly of the Boise Railroad Company, Ltd.*

Comprising:

A line of standard gauge street railroad in Boise City and its suburbs, together with rolling stock, franchises, and certain parcels of land described as the Natatorium Property and the Yates Park Property.

X. *Gem District Transmission Line.*

Consisting:

Of high tension transmission line, rights of way, poles, wires and electrical equipment, extending from Swan Falls Power House to Gem Irrigation District in Idaho, together with the Guffey branch thereof.

XI. *Stock and Bonds of Subsidiary Company.*

Including:

A. Certain capital stock and bonds of Owyhee Irrigation Power Company.

B. All the issued capital stock of Idaho Power and Light Company.

C. The capital stock of Idaho Traction Company.

D. Capital Stock of Boise Railroad Company, Ltd.

E. Capital stock of Boise and Interurban Railway Company, Limited.

XII. *Miscellaneous Portable Personal Property.*

XIII. *Apparatus in Idaho-Oregon Substations Owned by Power Company.*

Located in Baker County, Oregon, and Boise City.

XIV. *Idaho-Oregon Equipment Trust Property.*

Consisting:

Of various extension lines of Idaho-Oregon Light and Power Company, in Canyon and Washington Counties, Idaho, and Malheur and Baker Counties, Oregon.

XV. *All Properties and Franchises not Specifically Described.*

Together with all after acquired property, and all incomes and profits of all of said property.

It was further alleged in said bill of complaint of said Guaranty Trust Company of New York, Trustee, in said Cause No. 470, and also in the bill of complaint of the same plaintiff in cause No. 517, hereinafter referred to, as follows:

" That all of said property hereinbefore de-"scribed, (save and except such stocks, bonds, "securities, contracts, or choses in action as are "pledged with your orator under said mortgage, "and in its possession as pledgee and which it "offers, to surrender unto this Court, or to its "Receiver, for delivery to any purchaser at any "sale held hereunder) is located and situated in "the Counties of Ada, Owyhee and Canyon, in the "State of Idaho, and in the Southern Division of "the District of Idaho, and subject to the juris-"diction of this Court; *that said properties, real "and personal, constitute a single, indivisible Hy-"dro-electric power system, including stations, "substations, transmission and distribution* lines,

"and a single, indivisible electric street and inter-
"urban railway system, with properties appur-
"tenant to, and used in connection with, said pow-
"er and railway properties."

Upon, to-wit, January 19th, 1914, upon application of the Guaranty Trust Company of New York and upon consent of all defendants who had theretofore appeared in Cause No. 470 or in Number 468, (being the suit filed by Westinghouse Electric & Manufacturing Company, and which may be hereinafter referred to as "Number 468" or the "Administration Suit"), the Court entered an order providing for the consolidation of Causes 468 and 470 "for purposes of hearing and of said receivership, and the administration of the receivership estate and that both said causes proceed under the title of this cause, (Number 470), and all orders made and filed or entered herein, whenever and so far as applicable, shall be deemed as made in Cause Number 468 without being separately filed or entered therein," and it was further ordered, "that the said receivership of said O. G. F. Markhus now existing in Cause Number 468, * * *be extended to and over this cause, and that said O. G. F. Markhus shall be, and is hereby made, receiver in this cause, and that said order of December 23rd, 1913, entered in said Cause Number 468, wherein and whereby said O. G. F. Markhus was appointed receiver in said cause, be entered as the order of the Court in this cause, as of this date, and that said O. G. F. Markhus shall hold and act as receiver in this cause without further order of this Court."

During the pendency of Cause Number 470 and until final dismissal thereof, as will hereinafter be stated, the causes proceeded under the caption of "Cause Number 470", the various papers filed being generally further entitled, "Number 468 Consolidated", and various administration orders were from time to time entered by the Court, which, except as herein referred to, are not material to this record. The proceedings taken during the pendency of Cause Number 470 may be referred to herein as taken in "the Consolidated Causes".

By the order appointing the receiver it was provided, among other things, that the receiver was authorized "subject to approval by the Court, to pay and discharge all claims arising from the previous operation of said (Railway) Company, as in his judgment on examination are proper to be paid as expenses of operation, and the current and unpaid pay-rolls and vouchers, and supply accounts, incurred in the operation of said property at any time within six months prior thereto." Pursuant to this authorization, on the 29th of January, 1914, the receiver filed, in the Consolidated Causes, a report and petition, reciting and listing the operating, pay-roll, and supply accounts, accrued within six months prior to his appointment as receiver, as known to him, and further stating that there were other claims, secured and unsecured, which might be entitled to priority or to special legal or equitable claims against the receivership estate, or its earnings, or entitled to preferential payment under the six months' rule made by the

Court, and listing said claims, so far as known to him. The petition prayed for authorization to pay the claims approved by the receiver after notice to the parties and opportunity for objection by any party in interest, and that all other creditors, whose claims were not so allowed, be required to present their claims to the receiver for allowance within the time fixed by the Court, and upon such notice as the Court might order. This petition was granted by an order entered upon the same date, allowing and approving for payment the claims approved by the receiver, payment however, not to be made until further order of the Court after notice to the parties, and further ordering that all other creditors having claims for preference under the six months' rule, be required to present their claims to the receiver for allowances within ninety days from the date of the order, and that other creditors be required to intervene in the cause within a like time. Notice of the order was required to be mailed to all creditors known to the receiver, and to be published for four weeks in newspapers published in Boise, Idaho, Chicago, Illinois, and New York, New York. No question is raised on the form of this order or the notice given pursuant thereto, and it is stipulated that such notices were duly and regularly mailed and published as required by the terms of the order, and that due proof of the giving of such notice was filed by the receiver.

Pursuant to further notices regularly given, the hearing on the preference claims came on, on June 15th, 1914, and the Court then entered an order al-

lowing certain of said preference claims, and directing their payment, and dis-allowing others. Said order is not here material, as the claims passed upon by the Court did not include any of the claims involved in this record.

In the meantime, and within the time allowed by the Court for creditors to present their claims, the following named creditors, by cross-bill, or petition in intervention in the nature of cross-bill, filed with the Clerk in the Consolidated Causes, pursuant to leave of Court regularly obtained, claims to priority or preference in distribution either of the income of the receiver or proceeds of sale, as follows:

John A. Roebling's Sons Company of California	$21,057.37
American Steel & Wire Company	1,180.05
I. P. Morris Company	26,844.21
General Electric Company	2,475.92
Westinghouse Electric & Manufacturing Company	15,246.99

The petitions, answers, stipulations of fact and other stipulations and testimony on such of these claims as are involved in this appeal, will be included in full in the transcript of record, and will not be abstracted here.

These claims came on for hearing on the records as set out in the transcript of record on and after June 21st, 1914, and were taken under advisement by the Court.

After the submission of these claims and during the month of July, 1914, upon the hearing of certain

motions directed to the pleadings in Cause No. 470, the Court, by memorandum decision, intimated that the foreclosure bill in said Cause Number 470 had been prematurely filed, because the period of grace allowed by the mortgage after default had not expired at the time the bill was filed, and that a hearing might result in judgment of dismissal. Some doubt being expressed as to the effect which such a dismissal would have upon the intervening claims, and with a view to facilitating the administration of the estate, and to save the labor which had been expended in preparing and presenting the intervening claims to the Court for decision, the parties on, to-wit, October 6th, 1914, entered into a stipulation in the Consolidated Causes that any dismissal of Cause Number 470, should be without prejudice to the intervening claims presented by cross-bill or petition in intervention to the Court, and that such claims might be determined by the Court, after dismissal of Cause Number 470, either in Cause No. 468, or in any new suit to foreclose the mortgage of the Guaranty Trust Company of New York which might be brought by said Company. Thereafter, pursuant to such stipulation, and on December 17th, 1914, an order was entered in the Consilidated Causes dismissing Cause Number 470, and specifically providing as follows: "That said Cause Number 470, and the said amended bill filed herein, be, and the same are hereby dismissed without prejudice, Plaintiff to pay costs," further ordering, plaintiff consenting thereto, "That claims to preference heretofore made by intervention

or otherwise, and all proceedings had thereunder shall not be prejudiced by such dismissal, and if the Court shall hereafter consider such course necessary, such claims shall be deemed as filed in any new suit filed by said plaintiff, Guaranty Trust Company of New York." And said order further provided, "That either party hereto may apply to the Court for any directions to the receiver herein, arising out of the commencement, pendency and dismissal of said Cause Number 470." Immediately following the last mentioned order, and, to-wit, on December 17th, 1914, the said Guaranty Trust Company of New York, pursuant to leave of Court, filed a new bill of foreclosure, which said bill was docketed as Number 517, and made the Railway Company and its receiver and others not here necessary to be named, parties defendants. The bill was in substantially the same form as that which was dismissed, and covered the same property, but, in addition to the defaults stated in the bill in Cause Number 470, alleged other defaults subsequently accruing, and the running of the period of grace prescribed by the mortgage.

This Cause Number 517 was never consolidated with the administration suit Number 468, but the two proceeded independently, and on, to-wit, April 19th, 1915, a decree of foreclosure and sale was regularly entered in Cause Number 517.

By this decree of foreclosure it was provided, among other things, particularly in Paragraph Eight thereof, as follows:

> That the lien of the plaintiff herein adjudged, and any sale made under this decree to satisfy

said lien, or the proceeds of any such sale, as hereinafter provided, are subject:

1st. To the expenses of the sale and of the proceedings in this cause.

And inasmuch as it is alleged in the bill of complaint herein and appears that there was commenced in this Court on December 23rd, 1913, a suit wherein Westinghouse Electric & Manufacturing Company, a Pennsylvania corporation, was plaintiff and Idaho Railway, Light & Power Company, was defendant, by the bill in which said suit it was alleged, among other things, that the said defendant, Idaho Railway, Light & Power Company was indebted to the plaintiff, and to other creditors, and the appointment of a Receiver and the administration of the estate of said Idaho Railway, Light & Power Company, as an insolvent corporation on behalf of the plaintiff and other creditors, were prayed for, which said allegations were confessed by said defendant, and O G. F. Markhus, one of the defendants herein, was appointed Receiver of said Idaho Railway, Light & Power Company, which said suit is now pending undetermined in this Court, and the properties of said defendant, Idaho Railway, Light & Power Company are in the possession of this Court, through said Receiver, who has been and is administering the same since said date, under the orders and directions of the Court;

And it further appearing to the Court that various bills in intervention and suits claiming

preference in the distribution of the proceeds of any sale of the properties of the defendant, Idaho Railway, Light & Power Company, and claiming prior title and rights to parts of the mortgaged properties or to the income during the receivership, have been filed in this Court, either by way of interevention in said Cause No. 468, or in said Cause No. 517, or by plenary suit against said Receiver, to all of which bills in intervention and plenary suits the plaintiff herein, as Trustee, is a party defendant or respondent; and it further appearing that divers suits have been filed against said Receiver, in this Court, and in other courts, arising out of the operation of the properties hereinbefore described by said Receiver and his administration thereof;

Therefore, the said lien of the plaintiff and any sale hereunder, or the proceeds thereof, as hereinafter provided, are subject likewise to the expenses of administration, incurred in said Cause No. 468, including the expenses of the receivership and the administration of the receivership estate, and are also subject to all claims and demands which may be awarded priority to the claim of the plaintiff herein, against said Receiver, and said estate, in said Cause No. 468, or in any said suits against said Receiver, as the same may have been or may hereafter be adjudged and determined either by this Court, or any Court in which said suits may lawfully be pending, or upon any appeal, lawfully taken from

any decree of this Court in said Cause No. 468, or of this Court or any other Court in said plenary or independent suits;

The intervening claims pending in said Cause No. 468, herein referred to, are as follows:

(a) Cross-bill in the nature of intervening petition by Westinghouse Electric & Manufacturing Company, wherein and whereby said Westinghouse Electric & Manufacturing Company claims specific property otherwise covered by the plaintiff's said mortgage, by way of title reservation, in priority to the mortgage and the claims of the plaintiff thereunder, and of other creditors, or a preference right to the extent of the purchase price thereof, to-wit, $45,761.44, and further claims a preference on account of material and supplies furnished to the defendant, Railway Company, upon distribution of the proceeds of any sale herein, in priority to the mortgage indebtedness in the sum of $13,954.15.

(b) Cross-bill in the nature of intervening petition by I. P. Morris Company, wherein and whereby said intervenor claims preference in the distribution of the proceeds of sale of the properties of the defendant, Railway Company, prior to the mortgage indebtedness, in the sum of $26,-844.21 on account of materials and supplies furnished to said defendant, Railway Company.

(c) Intervening petition of John A. Roebling's Sons Company of California, wherein and whereby said intervener claims preference in distribution of the proceeds of the sale of the prop-

erties of the defendant, Railway Company, in priority to the mortgage indebtedness, in the sum of $21,057.37 on account of material and supplies furnished to said defendant, Railway Company.

(d) Intervening petition of General Electric Company, wherein and whereby said intervener claims preference in distribution of the proceeds of the sale of the properties of the defendant Railway Company in priority to the mortgage indebtedness in the sum of $2,475.92 on account of material and supplies furnished to the defendant Railway Company.

(e) Intervening petition of the American Steel & Wire Company wherein and whereby said intervener claims preference in the distribution of the proceeds of sale of the properties of the defendant Railway Company in priority to the mortgage indebtedness in the sum of $1,180.05 on account of material and supplies furnished to said Railway Company.

* * * * * *

In so far the prior rights and claims mentioned in this paragraph are essentially claims to priority in distribution of the proceeds of any sale of the mortgaged properties, or are claims for money demands, against the Receiver and the estate in his hands on account of the administration of the receivership estate, to-wit: The petition by Westinghouse Electric & Manufacturing Company for preference in distribution referred to in sub-paragraph (a) hereof; the petition of I. P.

Morris Company for preference referred to in sub-paragraph (b); the petition of John A. Roebling's Sons Company for preference referred to in sub-paragraph (c); the petition of General Electric Company for preference referred to in sub-paragraph (d); the petition of American Steel & Wire Company for preference referred to in sub-paragraph (e); the petition of Hot Point Electric Company claiming income, etc., referred to in sub-paragraph (g); the suit of Daisy B. Henton against said Markhus, referred to in sub-paragraph (j), and any other prior rights or claims to priority in distribution of the proceeds of sale, or for money demands as herein provided for, the sale of the premises hereinafter decreed shall be free from said claims, and they shall be transferred to the proceeds of the sale, and the Receiver shall retain in his hands sufficient of said proceeds to meet said claims as they may be finally established, or shall take satisfactory security, to be approved by the Court, from the holders of bonds secured by the mortgage to plaintiff, to satisfy and discharge said claims as a condition of distributing to them the amount which may be so required to satisfy any of said claims then contingent, undetermined or in litigation, and not finally established.

And by said decree it was further provided, particularly by Paragraph Twentieth, as follows:

None of the provisions of the decree shall be construed as establishing a lien in favor of the

trustee or bondholders upon the income, including earnings uncollected, or any part of the income earned during the receivership, or foreclosing the claims of general creditors to have such income distributed to them, and in harmony with the theory and understanding of the Receiver and the Court in applying and permitting to be applied from time to time portions of such income to the discharge of interest upon underlying bonds, indebtedness incurred for construction work, sinking fund and other non-operating purposes; so much of the funds received upon a sale of the property as are necessary to restore to the receiver the amounts so expended, shall be deemed to have the status of operating income arising during the receivership and in the hands of the Receiver, the rights of all claimants, including the plaintiff trustee, thereto to be determined in said Cause No. 468.

Following the decree of foreclosure, and on, to-wit, June 14th, 1915, the property described in the plaintiff's bill in said Cause Number 517, and in the decree, was sold by the Master appointed by decree to make said sale, for to-wit the sum of $4,542,750.00, and the sale was on June 21st, 1915, regularly confirmed, and deed thereafter delivered to the purchaser thereof, the Electric Investment Company, a corporation. The sum realized from the sale was sufficient to pay a dividend of $534.15 on each $1000.-00 bond decreed by the Court to be outstanding under the mortgage to the plaintiff in said Cause Number

517, the Guaranty Trust Company of New York, and such dividend was thereafter paid by the Master.

After the entry of the foreclosure decree and on April 26th, 1915, the Court entered its memorandum decision on the intervening petitions or cross-bills hereinbefore mentioned, in which some of the claims were allowed in part and disallowed in part and others were disallowed *in toto* as preferred claims, the amount disallowed being allowed as claims of general creditors. All of which more fully appears in the decree which is included within the transcript of record.

Following this decision and after the disposal of other questions involved in the administration suit Number 468, final decree was entered in said suit on, to-wit, December 20th, 1915, and is set forth in full in the transcript of record. The dividend allowed by the decree and subsequent orders to general creditors, including the interveners or claimants of preferred claims in so far as their claims were allowed as general creditors' claims, was Three and 22/100c (.0322) on the dollar of their claims.

* * * * * *

This stipulation shall constitute a part of the record on appeal, and shall be in lieu of the transcript of such files and papers as would otherwise be required to substantiate the facts herein stipulated, except as it has been stated, that such papers shall be included in the transcripts of record. It shall therefore be sufficient upon the appeal to the Circuit Court of Appeals from the decree, by any of the herein mentioned intervening claimants to preference or prior-

ity in distribution of income earned by the receiver or proceeds of foreclosure sale, to include within the record, in addition to this stipulation and such files and papers as are necessary to show the jurisdiction of the Appellate Court, the following files and papers, to-wit:

Original Bill in Number 468,

Answer in Number 468,

Order appointing receiver in Number 468,

Bill or Cross-bill of such intervening claimants as desire to appeal, with all answers or responsive pleadings, and stipulations of fact or for hearing on the intervening petitions, and transcript of testimony taken upon said hearing,

Memorandum decision of the Court on the intervening claims, dated, to-wit, April 26th, 1915, and

Final decree in Number 468, dated December 20th, 1915.

Provided, however, that any party to such appeal shall have leave, by *praecipe* to the Clerk, to direct the inclusion in the transcript of the record of any other file or paper, not mentioned in this stipulation, which he may deem necessary to a proper presentation of the appeal.

Dated this 24th day of April, A. D. 1916.

BEVERLY L. HODGHEAD,

Solicitor for John A. Roebling's Sons Company of California, a corporation, Intervener and Appellant, and I. P. Morris Company, a corporation. Cross-complainant and Appellant.

JOHN F. MacLANE,

Solicitor for Idaho Railway, Light & Power Company, a corporation, and O. G. F. Markhus, Receiver thereof, Defendants and Appellees.

WYMAN & WYMAN,

Soicitcrs for Guaranty Trust Company of New York, a corporation, Trustee, Appellee.

JOHN F. MacLANE,

Solicitor for Electric Investment Company, a corporation, Appellee.

WOOD & DRISCOLL,

Solicitors for American Steel & Wire Company, a corporation, Appellee.

HAWLEY & HAWLEY,

Solicitors for General Electric Company, a corporation, Appellee.

PERKY & CROW, B. S. CROW,

Solicitors for Westinghouse Electric & Manufacturing Company, a corporation, Appellee.

Endorsed: Filed May 19, 1916.
W. D. McReynolds, Clerk.
By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

In Equity—No. 468.

STATEMENT OF EVIDENCE UNDER EQUITY RULE NO. 75, ON THE APPEAL OF I. P. MORRIS COMPANY AND JOHN A. ROEBLING'S SONS COMPANY OF CALIFORNIA, INTERVENERS AND CROSS-COMPLAINANTS.

Be It Remembered That this cause came regularly on for trial before the Court sitting in equity on the 19th day of June, 1914, on the bills in intervention or cross bills of John A. Roebling's Sons Company of California and I. P. Morris Company, and that the following testimony was given in support of the claims of preference of the I. P. Morris Company and the John A. Roebling's Sons Company of California, under their bills or cross bills involved in this appeal.

O. G. F. Markhus, Receiver, heretofore duly sworn, upon being recalled, testified in substance as follows:

DIRECT EXAMINATION BY MR. HAGA.

I am familiar with the facts stated in the stipulation handed me and filed herein marked "I. P. Morris Exhibit No. 1", being a statement of facts relative to the cross-bill of the I. P. Morris Company for preference. The facts therein stated are true. I furnished most of the data, if not all of it, that is set forth in that stipulation. Shortly after being appointed Receiver in this proceeding I made an application or petition to the Court for certain repairs and improvements on what is known as the Swan

Falls plant. The second paragraph of my petition for authority to make improvements reads as follows:

"Repairs on Swan Falls water wheels:

"Certain of the water wheels at the Swan Falls power plant are in disrepair and parts thereof need replacing. The details of such repairs and replacements are stated in the report of Mr. Trenner, attached hereto, marked Exhibit 'C'. The estimated cost of such repairs and replacements is $3,000."

Exhibit "C" referred to in the extract just read reads as follows:

"Boise, Idaho, January 27th, 1914.

"Mr. O. G. F. Markhus,

"Receiver Idaho Railway, Light & Power Co.,

"Boise, Idaho.

"Dear Sir:

"One of the 850 K. W. wheels at the Swan Falls plant suffered an accident shortly prior to your appointment as Receiver, the runner being completely demolished and the casing partly destroyed. An order for the parts was at once placed with Allis-Chalmers Company, the manufacturer of the wheel, but was not recognized by them by reason of the non-payment of an old disputed account. They demand payment in advance before manufacturing these parts. The wheel is entirely out of commission, reducing the capacity of the plant accordingly, and the power which such wheel is capable of generating is ab-

solutely necessary to supply this season's business. Prompt action is therefore necessary. The manufacturer's cost of the replacements is $1,575.00. The cost of freight, hauling, labor and incidental expenses will make the total cost of this repair approximately $3,000.00. I earnestly recommend authority for this work to be obtained from the Court forthwith.

"Very truly yours,

"W. H. TRENNER,

"Superintendent."

Mr. Trenner, who signed this report, was working for me as Receiver, is a competent employee. The permission or authority to make the improvements requested was granted by the Court and the improvements have been made. I consider them most necessary.

The amount of the authorized capital stock of the Idaho Railway, Light & Power Company is $30,000,000. Of this amount $3,625,400 preferred and $12,566,200 of common has been issued. The date of the contract with the I. P. Morris Company is October 31, 1912. The order for the material purchased from John A. Roebling's Sons Company was made about March, 1913, after the improvements or enlargements of the Swan Falls plant were started. There was considerable haste about getting the Roebling material. The occasion for it was the building and early completion of the Swan Falls-Gem transmission line. I don't know about any actual contract for furnishing power over that line before the order for

material from John A. Roebling's Sons Company, but we were under obligations to furnish power to the Gem District. That is why we rushed the order or rather were in haste to get the material for the building of that line. The order was placed here. I don't recall who instructed me to give the order, but we got instructions from New York. Some one advised us of the necessity of building that line in order to fill those power requirements of the Gem District. I don't believe the order contained the information where the material was to be used. I am also familiar with the stipulation of facts handed me and filed herein marked "John A. Roebling's Sons Company Exhibit No. 1". I have read the stipulation, and the facts therein stated are true. I am acquainted with Samuel L. Fuller. He lives in New York City. Prior to my appointment as Receiver in this case I was General Manager of the Idaho Railway, Light & Power Company, and have occupied that position since that company was organized. Samuel L. Fuller is the Vice-President of the Railway Company, and with respect to finances he was in fact its managing director but not in respect to the technical or the detailed management of its affairs; I had charge of that. Mr. Fuller was at the head of the syndicate. Mr. Watson at one time was managing director and he was later followed by William and Sinclair Mainland.

CROSS-EXAMINATION BY MR. WYMAN.

I do not recall any correspondence with the John A. Roebling's Sons Company concerning the material

they furnished. I think our dealings were directly with the representative of Roebling's, and he no doubt was made acquainted with where the wire was going and the purpose for which it was to be used, in the construction of the Swan Falls-Gem District extension. The material consisted of copper cable for transmitting power, approximately ninety miles of copper cable, I think No. 1 B and S size. I think the order was given in March, 1913. I do not recall when the actual contract was made with the Gem Irrigation District; it is quite likely it was in April following. I can ascertain the date.

MR. HAGA: I can give you that date—March 4th.

MR. MacLANE: March 4th was the date of the contract between the Crane Falls Company and Gem Irrigation District. The question is, whether the Idaho Railway, Light & Power Company assumed that contract.

MR. WYMAN: The date I wish, Mr. Markhus, is the date when the Railway Company assumed the contract for furnishing power.

MR. MacLANE: I can give you that date approximately.

MR. HAGA: Mr. Wyman, if you are going to assume that the date in the written contract is the actual date of the agreement for the assignment of that contract, then we want to take depositions on that point.

MR. WYMAN:

Q. Now, Mr. Markhus, in regard to these wheels,

etc., of which you have just testified that the repairs and replacements amounted to $3000.00, that was no work upon which I. P. Morris furnished any material or did any construction?

A. No, sir.

Q. It referred entirely to other units in the Swan Falls plant than those upon which I. P. Morris Company did furnish material and did do construction work?

A. Yes, sir.

REDIRECT EXAMINATION.

The transmission line from Swan Falls to the Gem Irrigation District is approximately thirty miles in length. The Idaho Railway, Light & Power Company owned in the neighborhood of two hundred miles—no—something over one hundred miles of transmission line, there being three wires to each line. A transmission line of one hundred miles would have three hundred miles of wire. My understanding is that the John A. Roebling's Sons Company was at one time offered notes for its claim but declined to accept them. I don't know who the members of the syndicate are which Mr. Fuller referred to, I only know our own directors and the Board Executive Committee, which I presume is the syndicate.

At 2 P. M., being recalled, the witness further testified:

I have examined the records in possession of the Receiver relative to the Idaho Railway, Light & Power Company transmission lines and the amount of wire it owns. The total number of miles of wire,

including transmission, distribution, trolley and trolley-feeders owned by the Company is about 790 miles, counting single wire. In some cases the lines have three wires to a line. In the distribution system there may be what is called a four-wire, three-phase system, the fourth wire being neutral; in other cases, only one wire. The net earnings for light and power during January, February and March, 1914, during my receivership are somewhat lower than they were during the same months for 1913, due principally to the extraordinary repairs at Swan Falls and also to the great reduction in the sale of power to the Idaho Traction Company, amounting to an average of about, I would say, $2000 a month. This reduction was due principally to the falling off of business on this lower schedule on the traction system.

CROSS EXAMINATION.

The wire used for transmission purposes is not serviceable for trolley purposes.

I have examined the books in the hands of the Receiver for the purpose of determining the holders of bonds of the Railway Company held as collateral. The total amount out as collateral is $2,465,000.00, held as follows: Kissel, Kinnicutt & Company, $427,000; Chase National Bank, $338,000; Winslow-Lanier & Company, $225,000; Slick Brothers, $42,-000; Westinghouse Electric & Manufacturing Company, $31,000; Allis-Chalmers Company, $91,000; Colonial Trust & Savings Bank, $625,000; W. and S. Mainland, $40,000; and in the treasury $646,000, in

order to make up that $2,465,000 total. I would like to explain that the W. and S. Mainland is not a straight collateral, that $40,000.

The present amount of bonds outstanding is $9,095,000.

REDIRECT EXAMINATION.

The bonds in the treasury that I have referred to have been certified and are left in the treasury, not having been made use of. They amount to $646,000 and are included in the $9,095,000 outstanding.

By stipulation, the claimants read into the record certain portions of the deposition of Mr. Samuel L. Fuller taken in another proceeding, subject to any objection which might have been made or which might be made by the parties in interest to the materiality of the testimony. Before reading the deposition, the following colloquy took place:

MR. MacLANE: I wouldn't concede that any of the testimony would be material, but simply that Mr. Fuller would so testify if his deposition were taken in this case as he had in the other.

THE COURT: Is that agreeable to all?

MR. WYMAN: If your Honor please, I desire to save an exception, and make the objection—never having read the evidence that is now being offered—as to its materiality in this case; and further, if Mr. Haga is to read portions of the record, there may be other portions which I may desire to point out and may wish to have go into the record.

MR. HAGA: There is no objection to it.

THE COURT: You simply reserve the right to object to its materiality?

MR. WYMAN: Yes.

MR. HAGA: So far as its having been taken in another case, that is waived?

MR. WYMAN: Yes.

MR. HAGA: And his testimony shall have the same force and effect as if taken in this case?

MR. WYMAN: That is perfectly satisfactory.

Mr. Haga then read from the deposition, which, in substance, was as follows:

DIRECT EXAMINATION BY MR. MacLANE.

My name is Samuel L. Fuller. I reside in the State of New York and am a member of the banking firm of Kissel, Kinnicutt & Company, principal office 14 Wall Street, New York.

MR. WYMAN: Mr. Haga, may I ask if you will state to the Court generally the nature of the testimony you are about to offier, or which you are offering, so that the Court may know in advance something in reference to the matter.

MR. HAGA: It shows the relation of Samuel L. Fuller and his associates and the syndicate which advanced the money for the Idaho Railway, Light & Power Company to the company and to the management of the company, and to the bonds which are being foreclosed in this action.

MR. HAGA (Reading):

"Q. When did you first become acquainted with the properties of the Idaho-Oregon Light & Power Company, the defendant in this action?

A. As I remember it, it was first brought to my attention in the early part of 1911, when a Mr. Cox,

who was acquainted with one of the employes in my office, spoke to him about this business, and the employe in my office gave me a copy of a report made by Messrs. J. G. White & Co., which I read; and as a result of going over that report I told the employe in our office that the business did not interest me. Later Mr. Cox got in communication with Mr. Watson, who was then in our employ, and told Mr. Watson that if we would send out some one to look over the property and the country that he would stand the expense of such an examination. As we at all times keep an organization to look up properties of all sorts, every year, where it can be done without expense to us, in the hope of getting pieces of business, Mr. Watson, with my approval, sent one of the employes of the company that I am interested in, in Duluth, to Boise, who made an examination of the territory and the properties of the Idaho-Oregon Light & Power Company, and as a result of that examination, which was favorable, we went back and looked into the situation more in detail."

MR. HAGA: The witness is then shown certain contracts by counsel examining.

"Q. There is a reference in that contract to the acquisition of the Swan Falls power plant, and further reference to a new company to be organized to take the title to that plant. Will you state the reasons for such references?

A. When we looked into the Idaho-Oregon Company, its financial situation and its business, and the demand for its power from the territory which it

served, we found that the Idaho-Oregon Company had one very weak situation, and that was that it did not have sufficient power to fulfill the demands that it would be called upon to fill during the following years. The Idaho-Oregon Company had been buying some power from time to time from a plant called the Swan Falls plant, down on the Snake River, and the Mainlands, who were in charge of the Idaho-Oregon property, said and recommended that the purchase be made of the Swan Falls plant, as such purchase was absolutely necessary to secure the Idaho-Oregon Company with the necessary amount of power which it required, and it was part of the original understanding between the syndicate which was formed to supply the money in this particular piece of business that the Swan Falls plant should be so purchased for these reasons. The syndicate therefore told Mr. William Mainland to begin and carry through, if possible, the negotiations for the purchase of this plant, and these negotiations were carried along in good faith, and to what we believed was a successful conclusion, as definite terms were arranged for the amount to be paid for this plant. At this time, contemporaneously almost with our advent into the territory——"

"Q. State when the company at present known as the Idaho Railway, Light & Power Company was organized.

A. In the State of Maine.

Q. When?

A. When was it organized?

Q. Yes.

A. It was organized contemporaneously with our entering into the field here and the purchase of the Idaho-Oregon bonds. I think it was organized practically at the same time.

Q. You don't remember the exact month?

A. No; I think it was about November, wasn't it, November 11th?

Q. I am asking you.

A. I don't remember.

Q. What were the reasons for the formation of the company at that time.

A. The syndicate found themselves in possession of these properties which they had bought in order to protect the Idaho-Oregon situation, and it was necessary at that time to put those properties in some corporate form. The Idaho-Oregon Company was in no position financially, or its financial structure was not such that it could take in outside properties, and therefore the Idaho Railway Company was formed, with a sufficiently large capitalization and authorized bond issue to enable it to take care of its needs in the future and take over these properties at the actual cost price to the syndicate. After the Idaho Railway Company had obtained possession of the Boise Valley Railroad Company and the Swan Falls plant, it was then necessary to develop, as far as possible, the business of the Railway Company without interfering in any way with the business of the Idaho-Oregon Company, and in order to do that and accomplish that result the Idaho Railway purchased

the distributing systems in the towns of Nampa and Caldwell, so that they could get the whole profit of selling electricity in those communities, instead of just getting the profits they had previously gotten by selling the current at wholesale to the distributing companies in those towns. They also had their line running up the Boise valley here alongside the Boise Interurban Railway, and in a territory that had never been covered, and no intention of covering by the Idaho-Oregon Company. So they applied for franchise in Middleton, Star, and Eagle, and are now doing some lighting business in those towns. They also had, of course, the Boise Interurban Railway and the Boise Valley Railroad."

"Q. State how and when the Railway Company became the owners of the original syndicate's holdings of what was the bonds of the Power Company.

A. The syndicate found itself owning a large interest in the Idaho-Oregon Company, and also, for the benefit of the Idaho-Oregon Company and for the benefit of the entire situation, it built up here an absolutely independent and self-sustaining and what was going to be a profitable enterprise, consisting of a power plant, and a large interurban and urban street railway system, and they therefore, as the Idaho-Oregon Company was in no position financially to take over the properties of the Railway Company, and the syndicate had two interests, they thought it woult be wise to turn over all of their interests in the Idaho-Oregon Company to the Idaho Railway Company, which they did, taking securities

of the same class from the Idaho Idaho Railway Company for the securities of the Idaho-Oregon Company, which they turned in to the Railway Company."

"Q. Will you state in that connection how many bonds of the Railway Company were originally issued?

A. About six and a half million bonds originally issued.

Q. How was that reduced to four and a half million?

A. By the syndicate which owned those bonds agreeing to take two million of convertible debentures to the adjustment bonds given by the Idaho-Oregon bondholders."

CROSS EXAMINATION.

"Q. How long have you been connected with the Kissel, Kinnicutt Company, Mr. Fuller?

A. Since 1906."

"Q. What was your business prior to your becoming connected with Kissel, Kinnicutt & Company?

A. I have always been a banker."

"Q. You have spoken frequently in your testimony of the syndicate, in connection with the affairs of the Idaho-Oregon Company. Who compose that syndicate?

A. There are a large number of different individuals, perhaps fifty or one hundred different people in the syndicate, scattered all the way—I think there are some interests up in Montana, New York, Philadelphia, Boston, New England.

Q. Does each member of the syndicate have a stated percentage of interest in the syndicate?

A. Yes.

Q. When was that syndicate organized?

A. That syndicate was organized in 1911.

Q. For the purpose of dealing with the Idaho-Oregon situation?

A. For the purpose of doing all the things that we have done here. It was not a bond syndicate; it was not formed with any purpose of buying bonds and selling them again; it was what we call a construction syndicate.

Q. It was organized specifically in view of these transactions here in southern Idaho?

A. It was organized to do such things as seemed wise, as appeared from time to time, and sufficient capital was provided in the beginning to carry the matter through to an ultimate conclusion.

Q. How is that syndicate managed?

A. That syndicate is managed by my firm, as syndicate managers.

Q. Kissel, Kinnicutt & Company?

A. Yes, sir.

Q. Of Kissel, Kinnicutt & Company, who specifically has charge of the affairs of the syndicate?

A. No one person. I suppose I am more active in the knowledge of the situation out here, but the syndicate and the financial end of it is run by the partners of the firm, of course.

Q. In connection with the Idaho-Oregon matters and the Idaho Railway matters you have personally had charge, have you not?

A. I have been more connected with them than anybody else in our firm.

Q. Who are the principal members of that syndicate?

A. What do you mean by the principal members?

Q. Those having the largest interest and having taken the most active part in the management of its affairs.

A. Well, I should think that we were the principal interests.

Q. By that you mean that Kissel, Kinnicutt & Company?

A. Yes; although we haven't by any means the largest interest financially. If you mean financial interests, we are not.

Q. Who has the largest financial interest?

A. Your Honor, do I have to answer the question with regard to the syndicate? It is a more or less confidential business relation between my firm and their clients."

The witness was excused from answering.

"Q. Will you state, Mr. Fuller, so far as concerns the officering and controlling of the Power Company and the Railway Company, who the persons are who are concerned in two or more of these matters, meaning the Railway Company and the Idaho-Oregon Company and the syndicate?

A. I would be very glad to explain that to you. There are, as you know, a number of the directors of the Idaho Railway Company.

Q. Eleven, I think.

A. I think there are eleven. Five or six of those directors represent the financial interests who are interested in the syndicate. They consist of myself, Mr. Richmond, Mr. Robert H. Wiggin, Mr. John D. Ryan, Robert W. Watson, who has been an operating man and connected with the property in that connection as a director, but he has no connection with the syndicate at all. Mr. Charles Sabin. He is a vice-president of the Guaranty Trust Company, and interested personally, the same as Mr. Wiggin.

Q. Has this syndicate engaged in other operations than those in southern Idaho that are connected with the Power Company and the Railway Company?

A. No.

Q. This is their sole activity so far?

A. Yes."

"Q. You have stated in your direct examination that a long time prior to the putting out of the plan or reorganization, which is dated March 26, 1913, two million dollars of the bonds of the Railway Company had been subordinated?

A. Agreed to be subordinated.

Q. Agreed to be subordinated to the other four and a half million?

A. Yes.

Q. The syndicate held the two million, you state?

A. The syndicate held all the securities.

Q. Who held the four and a half million?

A. The syndicate. The syndicate holds everything, Mr. Summins. I made that plain here yesterday."

"Q. What was the reason for dividing the holdings and making two million subordinate to the other four and a half?

A. Because we realized that our investment that had been made in the Idaho-Oregon property was of very questionable value, and we, as a syndicate, determined to wipe it off and take equity for it in some other form, and leave bonds outstanding only that we were certain the interest could be earned on, and a good surplus, and take the rest of our investment in junior securities. You may remember that in the purchase of the Idaho-Oregon Company, the Boise Interurban Company, that entire purchase price was not paid in cash by the syndicate, but they took preferred stock for the entire Boise Interurban purchase. No bonds were ever issued for that; no money was ever raised for it. The syndicate took preferred stock for the Boise Interurban. No bonds have ever been issued for that property at all.

Q. That had nothing to do with the Idaho-Oregon?

A. No, but I am illustrating to you that the syndicate was a syndicate formed not to buy bonds to sell them, but was a syndicate formed by strong interests all over the country out here who were willing to come out into this situation, with what appeared to be bright prospects, but later on turned out not to be so bright, but people who were willing to take those securities and wait until the company grew up, until they could sell their bonds."

MR. HAGA: That is all, if the Court please.

MR. WYMAN: If your Honor please, I understand that all of this testimony has gone in subject to the objection as to its materiality.

THE COURT: Yes.

ORDER SETTLING STATEMENT.

The above and foregoing statement of evidence being tendered to me for settlement and allowance, and it appearing to me that said statement was lodged in due time with the Clerk of this Court and that notice of such lodgment and of the time of the proposed settlement thereof was given by I. P. Morris Company and John A. Roebling's Sons Company of California through their solicitor to all parties to said appeal, and that no objection thereto has been made or filed, and the time for making objections having expired,

It is hereby certified, That said statement is in all respects true, correct and properly prepared and contains a full transcript of the evidence reduced to narrative form pertaining to the issues raised by the assignment of errors. Provided the exhibits therein referred to and particularly the extended Stipulation of Facts verified by the witness Markhus is incorporated or are deemed to constitute a part thereof.

Dated May 19th, 1916.

FRANK S. DIETRICH,
District Judge.

Lodged April 28th, 1916, filed May 19th, 1916, W. D. McReynolds, Clerk. By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

DECISION ON INTERVENTIONS OF JOHN A. ROEBLING SONS CO., AMERICAN STEEL & WIRE CO., I. P. MORRIS CO., GENERAL ELECTRIC CO., AND WESTINGHOUSE CO.

April 26, 1915.

Wyman & Wyman, Attorneys for Guaranty Trust Company,

Beverly L. Hodghead and Richards & Haga, Attorneys for John A. Roebling Sons Co.

Wood & Driscoll, Attorneys for American Steel & Wire Co.

Richards & Haga, Attorneys for I. P. Morris Co.

Hawley & Hawley, Attorneys for the General Electric Co.

Perky & Crow, Attorneys for the Westinghouse Company.

J. F. MacLane, Attorney for Receiver.

DIETRICH, DISTRICT JUDGE:

On December 23, 1913, the Westinghouse Electric & Manufacturing Company, a general creditor, commenced a suit against the Idaho Railway, Light & Power Company, upon its own behalf and for the benefit of all creditors of the same class. At the same time it applied for and secured the appointment of a receiver to take charge of all the property of the Railway Company, consisting of a hydro-electric power plant, electric transmission and distributing lines, and electric railways, situate in Southwestern Idaho. On January 29, 1914, the Guaranty Trust Company of New York brought suit against the Railway Com-

pany for the foreclosure of a trust deed executed by the latter as security for the payment of its bonds, of which there are outstanding approximately $9,000,000.00, face value. The receivership was thereupon extended to the foreclosure proceeding, and for certain purposes the two suits were consolidated. The interveners have come in in response to an order which was made and published requiring all creditors havings claims for which priority over the lien of the trust deed was claimed to intervene within a stated period. Later it was held that the foreclosure suit was prematurely brought, and the same was, upon motion of the plaintiff, the Guaranty Trust Company, dismissed, and thereupon a new suit was commenced, which has recently resulted in the entry of a decree of foreclosure. The property, however, has not yet been sold, and the receivership still continues.

Claim of John A. Roebling Sons Co.

This claim is for $21,057.37, besides interest, as the balance of an open account for copper wire furnished to the Railway Company by the claimant during the period from March 19, 1913, to May 17th. The whole account amounted to $38,577.17, upon which various payments were made prior to the receivership, aggregating $17,519.80.

The principal facts are incorporated in a written stipulation, to which is added the uncontradicted testimony of the receiver. The correctness of the account is conceded, and the only question is whether the claim falls within the class which in a foreclosure

receivership is sometimes recognized as having equities superior to the lien of the pre-existing mortgage or trust deed. The principle which the intervener invokes is of judicial rather than legislative origin, and in the multitude of decisions in which it has been considered and applied since the leading case of *Fosdick* v. *Schall*, (99 U. S. 235), there is naturally a want of entire harmony; as to its general features, however, there is substantial unanimity. The present controversy involves not so much a definition of the rule as a consideration of the circumstances under which exceptions thereto may be recognized in favor of the unsecured claimant. Generally speaking, debts for original construction work do not fall within the rule, but only expenses incurred in the ordinary operation and maintenance of the property. The doctrine rests upon the implied consent of the bondholders that the current income shall first be applied to the discharge of current expenses.

Again, the equity of the claimant extends only to the income and not to the corpus of the estate. In the case of improper diversion of the income, however, restoration will be made out of the proceeds of a sale of the property itself.

Generally, too, the application of the principle is limited to labor and supplies furnished within the period of six months immediately prior to the institution of the receivership. In a sense doubtless this limitation is arbitrary, but nevertheless it has come to prevail as a general rule. *Spencer v. Taylor Creek Ditch Co.*, 194 Fed. 635.

I am inclined to the view that for this last consideration alone the claimant must be denied a preference. Admittedly the latest item in the account is for material furnished more than seven months before the receivership was instituted and more than eight months before it was extended to the foreclosure suit. True, the time limit is not always observed, and instances may be cited where claims of much longer standing have been recognized, but if a rule at all, it must control in all cases which are not substantially exceptional. The discretion to relax it is a judicial discretion, resting upon something more substantial than mere whim or caprice. What reason can be assigned for treating the instant claim as an exception? It is a just debt and should be paid. But that is an appeal which any creditor of any insolvent debtor can make. The claimant expected to be promptly paid in the ordinary course of business, but such is the usual expectation. There were no misrepresentations, no deceitful promises, by which it was induced to remain inactive. Upon the whole, the case is one of ordinary commercial credit, typical, rather than exceptional.

Equally conclusive is the objection that the account is wanting in the essential characteristics of a preferential claim. With comparatively unimportant, if any, exceptions, the wire was furnished for new construction, and not for the repair or maintenance of the existing plant. Appreciating the strain in this branch of the case, the intervener seeks to attach an undue and unnatural significance to cer-

tain general phrases in the stipulation of facts. As disclosed by the stipulation, wire to the amount of $91.82 was used for the Swan Falls construction, $26,817.56 for the new Gem and Guffey transmission lines, $1,121.15 for service lines at Eagle, and $10,546.64 for the Idaho-Oregon Light & Power Company. The actual purposes for which these several items were used and the conditions surrounding the use are set forth in some detail, and then the stipulation closes with the following general paragraph: "All of the said wire has actually been delivered by the intervener to the Railway Company and devoted by the Railway Company to the purposes above specified, and is in use by the Railway Company (or by the Idaho-Oregon Company under said equipment trust agreement) as a part of the existing system, and has become a part of the Railway Company's system, has enlarged the same, and has contributed to the earnings and other values of the properties, and to the security of the bonds, and said material is and was necessary to the continued maintenance and operation of the respective parts of said property for which the same was supplied and in which it is used." It is is this last clause, namely, "and said material is and was necessary," etc., upon which the intervener relies. But even when taken alone this language does not signify that the wire was used for the purpose of repair or replacement, or that it was necessary to keep the plant a going concern. It is, of course, necessary to the maintenance and operation of those new parts of the system for the con-

struction of which it was used, and that is all. Any other view would be directly in the face of the concrete facts disclosed by other parts of the stipulation. The material so far as used by the Railway Company was employed not in repairing its existing system, but in enlarging it. Clearly such expenses are chargeable not to operation or maintenance, but to construction. It is possible that short service extensions and connections in a community already supplied with a general distributing system could be properly treated as necessary operating charges; this I do not decide. But surely there is no semblance of reason for holding that the extension of a long transmission line into a new territory and the installation of a new distributing system where there has been none before constitute expenses of operation. While the precise nature of the extension work at Eagle is not fully disclosed, it is thought that the facts shown are insufficient to warrant a finding that this item of $1,121.15 was an operating expense. The items $91.82 and $26,817.56 are clearly for construction work. As to the other item of $10,546.64, it is unnecessary to consider what status the claim would have if it were being asserted against the Idaho-Oregon Company. Certainly the material was not needed or used by the defendant for any purpose whatsoever, and therefore falls entirely outside of the scope of the rule.

Effort was made to show that the relation of the bondholders to the Railway Company was such as to estop the trustee from denying the interevener's

equity, but the evidence will not support a finding of that character. Essential elements of estoppel are wanting.

In denying the preference sought it is deemed proper expressly to refer to certain circumstances which are not disclosed by the record here, but of which we may take notice. (1) Apparently the wire furnished by the intervener to the Railway Company and by it turned over to the Idaho-Oregon Company constitutes a considerable portion of the "equipment trust claim," on account of which there has been awarded to the Railway receiver against the Idaho-Oregon estate approximately $20,000.00. (2) The trustee has dismissed the foreclosure suit to which the receivership was extended on January 29, 1914, and has commenced a new suit. It is possible that the intervener should be recognized as having an equitable claim to a distributive share of the income of the Railway properties arising during the period of the receivership, and especially an equity in the equipment trust fund referred to. Apparently the original foreclosure suit was prematurely and therefore wrongfully brought, and that being the case should not general creditors have such advantage as they might have secured if no receiver had been appointed, or at least such benefit as would have accrued to them if the trustee had not come into court?

The denial of the preference presently sought will therefore be without prejudice to these questions, which are only suggested, not decided.

American Steel & Wire Co.

This claim is for $1,180.05, also due on account of wire supplies. Of the material so purchased by the Railway Company all but $62.22 worth was for use by and went to the Idaho-Oregon Company, $694.04 by actual sale, and the balance by conditional sale under the equipment trust agreement. Only $62.22 worth was furnished for or used by the Railway Company, and of this amount $33.70 was prior to the six months period, and for that reason must be denied preference. Preference for that which went to the Idaho-Oregon Company must be denied because it in no wise constituted an operating expense of the Railway Company or a current debt contracted in the ordinary course of the business of that company. Surely the loaning of its credit to the Idaho-Oregon Company was not in the ordinary course of the business of the Railway Company. The fact that it owned most of the stock of that company and some of its bonds is not controlling. The stock may have been wholly worthless, and hence no substantial part of the security of the Railway bondholders, and its interest in the bonds may have been relatively unimportant. The case of *Southern Railway Co.* v. *Carnegie Steel Co.*, 176 U. S. 257, relied upon with apparent confidence by the claimant, is readily distinguishable, as is made manifest by this simple sentence quoted from the opinion: "The rights of the Carnegie Company, the claimant, are none the less because the Danville Company (the purchaser) chose, after obtaining the rails, to use a

part of them on roads under its control and in its possession, and whose preservation in proper condition was vital to its successful operation." If we assume that because it was the dominant stockholder the Railway Company had possession of and controlled the property of the Idaho-Oregon Company, it would be going far beyond the facts to say that the maintenance of the Idaho-Oregon plant in proper condition was vital to the successful operation of the Railway Company's system or any part thereof. While the relations of the two systems were such that there were common and mutual interests, the accruing benefits from the use of this material are too remote and contingent to serve as a basis for the application of the rule invoked. A preference can be granted only for the $28.50. As in the case of the Roebling claim, the denial of the preference for the balance is without prejudice to the right to make claim to a share of the equipment trust fund and to the income during the receivership.

I. P. Morris Co.

This claim may be briefly stated as follows: Upon October 31, 1912, the claimant entered into a written contract with the Railway Company to furnish to the latter certain machinery for installation in its Swan Falls plant. On account of the contract there became due the claimant in the aggregate the sum of $48,335.37, upon which payments were made amounting to $21,200.66. For the balance of $26,-493.16 two promissory notes were given, each for the sum of $13,246.58, each of date December 9,

1913, and each bearing interest at the rate of six per cent per annum from its date. No part of either of these notes, principal or interest, has ever been paid. The amount they represent, however, is subject to a credit of $5,138.00 for extra parts called for by the contract but which the claimant has not furnished. In addition to the notes there is a balance due to the claimant upon open account of $351.05. The machinery was used by the Railway Company in carrying out its plan of enlarging, rebuilding, and improving its generating plant, "by removing three 300 K. W. generating units, and replacing the same with two 1250 K. W. generating units, with the necessary foundations, wheel pits, gates, and tail races, and so arranged and placed that two additional 1250 K. W." units could be installed in the future.

In the view I have felt impelled to take, it is unnecessary to state the facts requisite to an understanding of some of the points argued. One consideration is controlling. Clearly the machinery was for the enlargement and not for the repair or the maintenance of the Railway Company's power plant. Nor was it required to enable it to perform obligations then existing to the public. True, by the new installation is was enabled to widen the scope of its service, but it was under no legal obligation thus to extend its field of activities. Surely it could not have been compelled by the mandate of a court or other tribunal to increase its capacity, nor would any one have had any remedy or right of action in his own

right or as a representative of the public, if it had failed or refused to make such enlargement. Furthermore, in considering the character of the work done, and also the sources from which it is reasonable to assume the claimant expected payment to be made, it will not do to compare the cost of the machinery purchased from the claimant with the aggregate value of all the Railway Company's properties. The latter owned not only the generating plant for which this apparatus was supplied, but also the transmission and distributing systems, and traction properties. The generating plant alone is here to be considered as the basis of comparison. What was the relation of the new work to this unit? And if we consider cost and values at all, what is the ratio of not merely the intervener's claim but of the entire cost of the new work, including the intervener's claim, to the cost or value of the whole generating plant? As is made plain by the stipulations and the testimony relating to this and other claims, this was not the only expense which the Railway Company was compelled to incur in order to increase its revenue. Some of the additional output, it is true, could be disposed of to new consumers upon existing lines, but not all. For the transmission and distribution of much of the current to be developed by the new installation new lines into new fields had to be constructed; and, besides, the intervener's claim was but one item in the expense of enlarging the power plant itself. In view of all these conditions, it is quite incredible that this

claimant or any or the claimants having knowledge of the plans of the Railway Company could have expected that this entire expense would be taken care of out of current receipts. The claim of preference is accordingly denied. *Porter* v. *Pittsburg-Bessemer Co.*, 120 U. S. 49. *Toledo, etc. Co.* v. *Hamilton*, 134 U. S. 296. *Wood* v. *Guaranty Co.*, 128 U. S. 416. *Thomas* v. *Western Car Co.*, 149 U. S. 145. *Southern Railway Co.* v. *Carnegie Steel Co.*, 176 U. S. 257.

General Electric Co.

This is a claim for $2,475.92, of which amount $346.42 is for current supplies furnished for the use of the Railway Company in maintaining and operating its plant during the six months period immediately prior to the receivership, and to that extent the claimant is entitled to a preference. About $600.00 is for similar supplies, which, however, were not furnished within the six months period, and therefore cannot be preferred. The balance of the claim is for transformers and motors purchased for and delivered to the Idaho-Oregon Company more than six months prior to the receivership, and is therefore not entitled to a preference. The transformers ($227.00) were embraced in the equipment trust claim against the receiver of the Idaho-Oregon Company, and the claimant may apply to share in that fund; and may also seek a distributive share in the receivership income.

Westinghouse Company.

Although plaintiff in the administration suit, the Westinghouse Company has also filed a complaint in

intervention or cross bill, in the foreclosure or consolidated suit. Its claim embraces several different classes of items, some of which are controlled by principles already discussed, while others involve distinctive considerations. . .

FIRST.—Substation apparatus in the terminal at Caldwell.—If I correctly understand the record, this is the identical apparatus covered by the intervention of the claimant here in the Idaho-Oregon receivership, where it has now been awarded complete relief. Such being the case, further consideration at the present time is unnecessary.

SECOND.—The motor generator set located in the substation of the Idaho-Oregon Company at Boise.—For the reasons explained in the opinion upon the claimant's intervention, just referred to, in the Idaho-Oregon receivership relative to the title of the apparatus in the Caldwell substation, it must be held that the intervener holds the title to this property, and it will therefore be permitted to reclaim it, and will also be paid a reasonable rental for its use during the receivership, unless upon terms to be agreed upon between the claimant and the receiver and approved by the Court the receiver elects to retain and pay for it, such payment to be made out of the funds arising from the foreclosure sale. *Gregg* v. *Mercantile Trust Co.*, 109 Fed. 220. Unless such adjustment is concluded before the sale, the master will be directed to sell subject to the claimant's rights, with the obligation upon the purchaser to relinquish the property and pay the rental or pay such price as it may agree upon with the claimant.

It is to be added that neither this claim nor that under the first subdivision falls within the scope of the rule of preference in case the property is returned and a rental paid for its use during the receivership. Aside from other considerations, the debts were incurred prior to the six month period, and the Caldwell claim at least was not for a current operating expense of the Railway Company.

THIRD.—The machinery furnished by the claimant under a conditional sale agreement for installation at Swan Falls.—This claim is thought to have the same status as that considered under the second subdivision, and similar relief will be awarded.

FOURTH. — The open account for $15,246.99 ($13,645.57 after deducting credits).—Following the claimant's classification of the items involved under this head, we have:

A. $1,925.36 for articles which may properly be held to have been used for the maintenance of the Railway Company's system. But of this amount $995.15 accrued prior to the commencement of the six months period, and therefore the amount of the preferential allowance will be only the balance, namely $930.21.

B. $2,537.94 was for construction work at Swan Falls, and is disallowed as a preference for that reason. It may be added that $713.93 thereof accrued prior to the six months period.

C. $990.85 was for construction work at Star and Eagle, and must be denied a preference, for the reasons stated in the discussion of the Roebling Sons

claim. Moreover, the larger part of the claim antedates the six months period.

D. $5,209.00 represents equipment furnished to the Idaho-Oregon Company under the equipment trust agreement. It is therefore denied a preference. The claimant may, however, apply for a distributive share of the funds coming into the receiver's hands from that account.

It is also to be noted that $2,821.77 of this item antedates the six months period.

E. $1,747.22 falls under what is called the agency account with the Idaho-Oregon Company, and, for reasons already explained, it cannot be given a preference.

F. Just what status is claimed for what are classified in the intervener's brief as *"Sixth," ($2,053.52)*, and *"Sixth-a," ($782.84)*, is not made entirely clear, but it appears that both items were for equipment or material furnished to the Idaho-Oregon Company, and it is manifest that they can have no greater dignity than the equipment trust or agency items. The claimant may, if the facts warrant, show that on account thereof it is entitled to share in the equipment trust fund.

It will be observed that these several items aggregate $15,246.99, but the Railway Company, such is the stipulation, is entitled to credits aggregating "$1,601.42 by reason of a special discount on purchases under blanket contract covering re-sale apparatus and whatever additional small articles" are shown in the lists incorporated in the stipulation.

Just how it was intended this credit should be applied is left in doubt, but apparently it should go toward a reduction of the items for apparatus furnished (re-sold) to the Idaho-Oregon Company, and I have concluded to permit the claimant to elect to what item or items it shall be applied.

It is scarcely necessary to add that the claimant is not, by the conclusions herein stated, debarred from applying for a share in the income arising during the existence of the receivership.

Endorsed: Filed April 26, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

In Equity—No. 468.

FINAL DECREE.

This cause came on to be heard at this term and was argued by counsel and thereupon upon consideration thereof, it was ordered, adjudged and decreed, as follows; viz.:

1. That all the allegations of the bill of complaint, not inconsistent herewith, are true and correct. That defendant Idaho Railway, Light & Power Company, hereinafter called the "Railway Company," was at the time of filing the bill herein, and is now completely insolvent. That O. G. F. Markhus, a citizen and resident of the State of Idaho, herein appointed Receiver of said defendant Railway Company has sequestered the properties and impounded the income of said defendant for the benefit of creditors, as their interests may appear, and the estate

of said defendant, including its properties and the income thereof, during the receivership should be, and hereby are, administered and disposed of for the benefit of all such creditors as hereinafter adjudged and decreed.

2. Prior to the commencement of this action, defendant Railway Company having made, executed and delivered to the Guaranty Trust Company of New York its mortgage securing an authorized issue of $30,000,000 first and refunding sinking fund 5% gold bonds, under which divers bonds had been issued and were outstanding; the said Guaranty Trust Company of New York, after the filing of plaintiff's Bill herein and on, towit: January 14, 1914, filed its Bill (docketed as No. 470) for a foreclosure of said mortgage on account of certain defaults alleged in such Bill. Thereafter and on, to-wit: January 19th, 1914, the said cause No. 470 was consolidated with this cause, under the number and title of said cause No. 470 for the purposes of administration, and proceedings were had in said consolidated cause until on, to-wit: December 17, 1914, when, pursuant to proceedings had in the said foreclosure cause No. 470, the said cause No. 470 was dismissed without prejudice, and thereafter and on the same date, to-wit: December 17th, 1914, the said Guaranty Trust Company of New York filed a new Bill of Foreclosure against said defendant Railway Company and other defendants therein named, which was docketed as No. 517, and such proceedings were had upon said bill that on, to-wit: April 19th, 1915, Decree of Fore-

closure and Sale was entered by which said Decree it was ordered, adjudged and decreed that there had been certified, delivered, issued and were outstanding bonds of the Railway Company secured by the mortgage to the said Guaranty Trust Company of the aggregate par value of $8,449,000, and that default had been made thereon, and the principal thereon with certain interest was therein decreed as due. By said decree, Receiver herein, O. G. F. Markhus, was appointed Special Master to sell all properties of every kind, nature and description of the defendant Railway Company to satisfy the claim of the said Guaranty Trust Company of New York, and the holders of bonds secured by the mortgage to said Guaranty Trust Company of New York, and said Special Master proceeded to sell the said premises as directed by the decree, and did sell the same to Electric Investment Company, which said sale was confirmed by the Court in order dated June 21, 1915. It appearing to the court that the purchaser has complied with all the obligations of the bid and the order of confirmation, as has been decreed in said cause No. 517, it is ordered, adjudged and decreed that said sale and the various proceedings in said cause No. 517 are hereby confirmed in this cause, and the title to said properties is hereby vested in the purchaser, Electric Investment Company, free from any lien, claim or demand in these proceedings, and prior lien or claim of the holders of the bonds secured by said mortgage to the Guaranty Trust Company of New York upon the proceeds of said sale (except as here-

inafter specifically decreed) is hereby recognized and confirmed.

3. During the pendency of said cause No. 470 and on, to-wit: June 15th, 1914, the Receiver was directed to pay from the income accruing during the receivership, as operating and maintenance expenses accruing within six months prior to his appointment as Receiver, divers and sundry claims aggregating $10,847.39, which said payment having been made pursuant to directions of the Court, is hereby confirmed, and is charged against the proceeds of sale in said cause No. 517.

That in addition to the said claims so paid by the Receiver pursuant to said order of June 15th, 1914, the following claims to priority or preference in the distribution of the proceeds of sale were presented by intervening petitions, pursuant to order of the court permitting the filing of the same, to-wit:

John A. Roebling Sons Company of California	$21,057.37
American Steel & Wire Company	1,180.05
I. P. Morris Company	26,844.21
General Electric Company	2,475.92
Westinghouse Electric & Mfg. Co.	15,246.99

Pursuant to stipulation of parties, said cause No. 470 during the pendency and under the caption of which these claims were filed, when dismissed was dismissed without prejudice to the said preferential claims and jurisdiction was reserved to determine the same in this proceeding and to charge any amounts allowed said claimants as preferred claims

against the proceeds of sale in cause No. 517. Evidence having been introduced in support of said claims and each thereof and the same argued and submitted to the court for decision, it is hereby *ordered, adjudged* and *decreed* that the said claims and each thereof be disallowed as preferred claims (but without prejudice to their allowance as general creditors' claims) except as follows, to which extent, and only to which extent, the said claims are allowed and are charged as first liens against the proceeds of foreclosure sale in said cause No. 517, to-wit:

American Steel & Wire Company.....$ 28.50
General Electric Company.....346.42
Westinghouse Electric & Mfg. Co.....930.21

In addition to the foregoing claims to preference, the Westinghouse Electric & Mfg. Company, also by its bill of intervention claimed as a lien against the proceeds of sale the sum of $31,447.51 with interest, or in lieu thereof decree awarding it prior title to certain apparatus furnished by it to the Railway Company under contracts of conditional sale, by which title to said apparatus was reserved until the same should be paid for.

This said claim having been allowed, and the Special Master having paid the same from the proceeds of sale pursuant to directions of the Court heretofore made, such payment is hereby approved and confirmed and the amount thereof charged against the said proceeds of sale in cause No. 517.

4. The Court on or about December 28th, 1914, having entered an order directing the general credit-

ors of defendant Railway Company to file their claims on or before April 1st, 1915, the Receiver under date of April 27th, 1915, having reported to the Court the claims so filed, together with proof of due publication and mailing of said order of December 28th, 1914, as required thereby, and the Court having ordered all objections or exceptions to said claims to be filed with the Clerk on or before June 1st, 1915, and having set June 14th, 1915, for hearing of said objections or exceptions, due notice of said last mentioned order likewise having been given and filed, and the matter coming on to be heard and submitted for decision, the Court upon hearing thereof having allowed claims, which after deducting all credits and offsets, and computing interest thereon to December 1st, 1915, are as follows, to-wit:

(1)	Westinghouse Electric & Manufacturing Company .....$	45,761.44
	This claim having been paid in full since the allowance thereof, and released balance remaining thereon is.....	000.00
(2)	Westinghouse Electric & Manufacturing Company	14,791.29
(3)	Westinghouse Electric & Manufacturing Company	27,989.35
(4)	Bates & Rogers Construction Company	17,585.00
(5)	Bates & Rogers Construction Company	25,137.80
(6)	Bankers Trust Company.....	567.85

(7)	Hot Point Electric Heating Company	215.32
(8)	Alfred E. Norton	2,757.91
(9)	Allis-Chalmers Manufacturing Company	100,100.00
(10)	General Electric Company	2,759.99
(11)	Anna Noble Executrix	11,585.00
(12)	C. R. Shaw	13,438.60
(13)	Idaho Hardware & Plumbing Company	63.17
(14)	Carlson-Lusk Hardware Company	11,585.00
(15)	Viele, Blackwell & Buck	13,492.20
(16)	American Steel & Wire Company	1,353.24
(17)	Western Lumber & Pole Company	605.93
(18)	B. J. Carney & Co.	3,395.21
(19)	Wm. & S. Mainland	1,496.08
(20)	Wm. & S. Mainland	497.10
(21)	Nampa Department Store	196.57
(22)	Guaranty Trust Company of New York	945.13
(23)	Guaranty Trust Company of New York	795,352.55
(24)	Guaranty Trust Company of New York	3,751.585.50
(25)	I. P. Morris Company	30,239.33
(26)	John A. Roebling Sons Company of California	24,960.29
(27)	Murphy Lumber Company	200.91
	Total	$4,852,886.32

The Court does hereby *order*, *adjudge* and *decree* that said amounts and each of them are due to the respective claimants above named from said defendant Railway Company, and they, and each of them, have in form and effect a judgment against said defendant Railway Company, and said claims are entitled to be paid equally and ratably without preference or priority of one over the other, from any assets in the hands of the Receiver of said Railway Company available for such payment, as hereinafter decreed. Said claims, and the judgment hereby awarded thereon, are inferior and subordinate to the preferred claims above mentioned, and to the decree in favor of the Trustee in said cause No. 517, and are not a lien against any of the property covered by said decree, but the said property in the hands of the Electric Investment Company, the purchaser, is free from any said lien, and said judgments are only enforcible to the extent that there are assets hereinafter prescribed available for the payment thereof, or insofar as there may be property or rights of defendant Railway Company elsewhere than in the State of Idaho, and not covered by the said Decree of Foreclosure.

In so far as any of said bonds are secured by bonds of defendant Railway Company, or other collateral, all dividends paid by the Special Master upon said bonds, or proceeds of other collateral, shall be deemed credited upon said claims, and the judgment hereby awarded shall not be enforced except for the deficiency remaining after the application to the re-

duction of said claims, of any said dividend, proceeds of other collateral, and the dividend hereinafter declared, from the funds in the receiver's hands.

5. The claim of E. H. Jennings against defendant Railway Company for the sum of $183,800 and his exceptions to the report of the Receiver are hereby disallowed and over-ruled.

The claim of Westinghouse Electric & Manufacturing Company against the proceeds of the so-called Idaho-Oregon Equipment Trust account in the hands of the Receiver is hereby allowed in the sum of $2,500.00.

The foregoing claim of the Guaranty Trust Company of New York, as Trustee, listed as number 24, is for the deficiency remaining due upon $6,630,000.00 face and par value of bonds of defendant Railway Company after the application of the proceeds of sale to said bonds, and is in addition to and not subject to reduction by the dividend upon said bonds resulting from distribution of proceeds of foreclosure sale in said cause No. 517.

6. The Receiver having filed herein his final report and account, and due notice thereof and of the time for settlement having been given, and all objections or exceptions thereto having either been withdrawn or over-ruled by the Court upon the hearing thereof, said final report is in all things confirmed and accepted by the Court and the Receiver is to be deemed charged and credited with the amounts shown by said final report and account to be respectively charged and credited to him, and said re-

port is adopted as a basis for the distribution hereinafter decreed.

7. The decree of foreclosure in said cause No. 517 contains, among others, the following provision (Paragraph Twentieth):

> "None of the provisions of the decree shall be construed as establishing a lien in favor of the trustee or bondholders upon the income, including earnings uncollected, or any part of the income earned during the receivership, or foreclosing the claims of general creditors to have such income distributed to them, and in harmony with the theory and understanding of the Receiver and the Court in applying and permitting to be applied from time to time portions of such income to the discharge of interest upon underlying bonds, indebtedness incurred for construction work, sinking fund and other non-operating purposes; so much of the funds received upon a sale of the property as are necessary to restore to the Receiver the amounts so expended, shall be deemed to have the status of operating income arising during the receivership and in the hands of the Receiver, the rights of all claimants, including the plaintiff trustee, thereto to be determined in said Cause No. 468."

Pursuant to the reservation of jurisdiction so contained in said decree, the plaintiff in said Cause No. 517, Guaranty Trust Company of New York, having filed in this Cause on December 19, 1914, its petition seeking to impound the income and assets in the pos-

session of the Receiver for the benefit of the bondholders represented by it, and the plaintiff herein, Westinghouse Electric & Manufacturing Company, and the Hotpoint Electric Company, having filed petitions seeking to charge the Trustee and the bondholders represented by it with all payments made by the Receiver from income for bond interest and sinking fund on underlying mortgages upon divisional properties of defendant Railway Company, prior in lien, to the general refunding mortgage to the said Guaranty Trust Company of New York, and further seeking to impound for the benefit of themselves and all general creditors of defendant Railway Company all the income of the receivership, and the said petitions coming on to be heard pursuant to order of the Court and notice to all parties and creditors who had filed claims in the proceedings, and the Court having considered the same and having, to-wit: on November 10th, 1915, made and filed its decision in writing upon the matters presented by the said petitions, it is *ordered, adjudged* and *decreed*:

(a) That the said petition of the Guaranty Trust Company of New York is sustained and the relief thereby prayed for, to-wit, the impounding of the income for the benefit of the said Guaranty Trust Company of New York and the bondholders represented by it, is granted as to all income received and collections of cash made by the Receiver (except as herein otherwise expressly decreed) subsequent to the date of the filing of said petition of said Guaranty Trust Company of New York, to-wit, December 19,

1914; and said petition is denied and dismissed, and the relief thereby prayed for is refused as to all income received or collections of cash made by the Receiver prior to said December 19, 1914, which said last mentioned income and collections of cash are impounded and set apart as a fund for distribution to general creditors, as their claims have been hereinbefore allowed and decreed.

(b) The petitions of said Westinghouse Electric & Manufacturing Company and Hotpoint Electric Company are sustained as to income received and collections of cash made by the Receiver prior to December 19, 1914, and likewise as to all diversions to interest and sinking fund payments upon underlying mortgages, and as to all construction expenditures, made by the Receiver prior to December 19, 1914, which said interest, sinking fund and construction payments are charged against the said Trustee and the bondholders represented by it; and said petitions are otherwise denied.

Accordingly the Receiver is deemed to have on hand as income and collections of cash constituting a fund for the satisfaction of claims of general creditors, as hereinbefore decreed, of $156,464.06, made up of the following items:

Cash on Hand	$52,423.93
Interest and Sinking Fund Payments (exclusive Boise Railroad)	77,233.73
Construction Payments (exclusive Boise Railroad)	18,316.52

Nothing herein contained shall be construed to

charge the said Guaranty Trust Co. or bondholders represented by it with interest or construction payments made on account of said Boise R. R. Co., the properties of which have been decreed not subject to the mortgage of the said Guaranty Trust Co., and have been segregated from the receivership estate.

Claims collected by Receiver prior to December 19, 1914, on account debts due Railway Company $48,682.72

Total charges against Receiver for General Creditors' Fund $196,936.80

Against which sum Receiver is credited on account of disbursements, other than ordinary expenses of operation and administration, with the following payments:

Discharged lien 1913 taxes...	$31,319.62	
Payrolls for December, 1913, ordered paid by Court.....	3,621.50	
Miscellaneous accounts payable	137.31	
Accidents and damages resulting from Receiver's operations	3,350.00	
Accidents and damage expense	254.05	
Administration expenses, accounts, and settling estate	1,790.26	
Total Credits		$ 40,472.74
Leaving a balance cash deemed to be on hand to apply on claims of general creditors		$156,464.06

which said last mentioned sum the Receiver is directed to disburse *pro rata* among the creditors whose claims are hereinbefore allowed and decreed, in the proportion that the said claims bear to the said cash deemed to be on hand, and there is accordingly declared and decreed a dividend of three and two-tenths (.032) cents on each dollar of the said foregoing claims.

In order to carry out the court's decision and decree herein that the interest and construction payments so made by the Receiver are to be deemed cash on hand, and the amount thereof charged against the bondholders for whose benefit said payments were deemed to have been made, it is *ordered* that the Receiver shall make distribution by distributing the full dividend decreed and allowed to the general creditors whose claims are not evidenced by bonds of defendant Railway Company secured by the said mortgage to the Guaranty Trust Company of New York, and that the balance remaining on hand after said full dividend shall be divided among the creditors whose claims are so evidenced by bonds.

8. It appearing from the books of the Receiver that there are various accounts receivable, irrigation district warrants, etc., which, if collected by him would be charges to income from the commencement of the receivership to the period ending December 19, 1914, during which said period the income is held to be a fund for the benefit of general creditors, and it appearing that the said items are doubtful of collection, and that the claims, other than for cash, are

of doubtful value if collected, and being made up of the following items, to-wit:

L. L. Gray	$ 50.00
Nampa Iron Works	14.00
Owyhee Irrigation Power Company (payable in Gem Irrigation District Bonds)	67,000.00
Miscellaneous Consumer's Accts.	502.34
W. T. Booth	1,000.00
Maryland Casualty Company	154.05
Northwestern Real Estate Company	500.00
Gem Irrigation District Warrants	29,972.88
Total Accounts Receivable	$99,193.27

it is *ordered* that the Receiver sell all said accounts receivable, irrigation district warrants, etc., to the highest bidder for cash.

Notice of said sale shall be given by publication once each week for two successive weeks in some newspaper published in Boise, Ada County, Idaho, and in another paper published in Caldwell, Canyon County, Idaho, and the sale shall be held not less than ten days after the last publication, at the front door of the Ada County Court House in Boise, Ada County, Idaho. The sale when made shall be reported to the Court for confirmation and upon confirmation thereof any amount realized from the sale of said accounts receivable, irrigation warrants, etc., shall be added to the dividend hereinafter declared and distributed among the General Creditors in the same proportion that the amounts of said claims bear

to the amount so received by the Receiver from said sale.

9. It further appearing that there are other accounts receivable, claims and demands which have accrued to said receiver subsequent to December 19, 1914, and which should be credited, if collected, to income subsequent to said date, and other claims, rights of action and demands which are not subject to claims of general creditors under the terms of this decree, and that by the decree of foreclosure in said Cause No. 517 and the Master's Deed executed and delivered to the purchaser, the Electric Investment Company, pursuant thereto, all such accounts receivable, claims or demands have been sold and conveyed to the purchaser, it is *ordered, adjudged* and *decreed* that the Receiver assign all such bills receivable, rights, claims and demands, being all bills receivable, rights, claims and demands of defendant Railway Company and its receiver other than those mentioned in the preceding paragraph, to the said purchaser, the Electric Investment Company, by appropriate written assignment to be submitted to and approved by the Court before delivery thereof.

10. It appearing from the report of Receiver that he has as cash on hand the sum of $17,287.65, being the proceeds of the so-called Idaho-Oregon Equipment Trust collected by said Receiver (except the $2500 heretofore decreed to the Westinghouse Electric and Manufacturing Company), and the further sum of $27,371.28, being the proceeds of 107 Idaho-Oregon first and refunding mortgage bonds, likewise

collected by the Receiver, and the decree of foreclosure in said Cause No. 517 having specifically directed that the claims upon which said sums, and each thereof, were collected, and all judgments or rights arising out of the same, or cash proceeds thereof, should be sold to the purchaser, and the Master's Deed in said Cause No. 517 having purported to convey said rights, claims, moneys, etc., to the said purchaser, it is *ordered, adjudged* and *decreed* that the said Receiver pay over the said sums of money above mentioned aggregating the sum of $44,658.93, to the said purchaser, Electric Investment Company.

11. There are pending against the Receiver, as shown by his report, the following suits and claims which have not been determined and which involve title to property in the hands of the Electric Investment Company, the purchaser at foreclosure sale, on some parts of said property.

Bill by Colonial Trust Company, wherein and whereby said Colonial Trust Company seeks to foreclose its mortgage upon certain properties of said Railway Company formerly belonging to Boise & Interurban Railway Company.

Suit by Slick Brothers Construction Company seeking to establish title to certain properties known as the Crane Falls Power Site, in Elmore and Owyhee Counties, Idaho.

The Electric Investment Company, the purchaser, is accordingly substituted as party defendant in the said suits and the said Receiver is discharged from each thereof, and all liability of the said Receiver

in the said suits or either thereof is transferred to said purchaser.

The Receiver has brought, and there are pending, the following claims to property or to realize upon assets belonging to said Idaho Railway, Light & Power Company:

Suit against John G. G. Kerry on note for $50,000 with interest at 6% from April 22nd, 1913, pending in this court.

Suit against John. G. G. Kerry and Owyhee Irrigation Power Company for $582,500.00 damages for breach of contract.

The said claims, and each thereof, are hereby transferred to the purchaser, Electric Investment Company, and said purchaser is directed to cause itself to be substituted as plaintiff in said suits forthwith and upon its failure so to do, the said suits may be dismissed on motion, subject, however, to the consummation of negotiations for settlement of said suits by the receiver prior to his discharge.

12. The Receiver is hereby directed to carry out the provisions of this decree and to conduct the sales and make the payments hereby prescribed, and thereupon report his action hereunder, together with a final statement of his accounts, to the court, and thereupon the court, without further notice, will discharge said Receiver, pursuant to the petition for discharge accompanying the Receiver's final account heretofore filed herein on, to-wit: July 24, 1915, and the Notice to the parties and to all persons having

claims against said Receiver given, and published in connection with the filing of said accounts.

Dated December 20, 1915.

FRANK S. DIETRICH,
District Judge.

Endorsed: Filed Dec. 20, 1915. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

In Equity—No. 468.

NOTICE TO JOIN IN APPEAL.

To American Steel and Wire Company, General Electric Company, Westinghouse Electric and Manufacturing Company, and Guaranty Trust Company of New York, Trustee, corporations, and E. H. Jennings, parties to the above entitled cause, and to Messrs. Wood & Driscoll, Hawley & Hawley, B. S. Crow, Wyman & Wyman, and Cavanah & Blake, their Attorneys:

You, and each of you, are hereby notified That the undersigned on or shortly after the 22d day of April, 1916, will apply to the Judge of the above entitled Court for the allowance of an appeal to review the final judgment and decree of said Court herein, and the undersigned hereby demand and request that you and each of you join with them in said application for appeal, on or before said 22d day of April, 1916; and if you fail or refuse to join in said appeal by said date, you are further notified that you will be deemed to have acquiesced in said judgment and decree, and the undersigned will prosecute their said

appeal as to their own interests and without your assistance and will apply to the Court for an order of severance as to your interests and each of them.

Dated this 12th day of April, 1916.

JOHN A. ROEBLING'S SONS COMPANY OF CALIFORNIA,

By BEVERLY L. HODGHEAD,

Its Attorney, Residence: San Francisco, California.

I. P. MORRIS COMPANY,

By BEVERLY L. HODGHEAD,

Its Attorney, Residence: San Francisco, California.

Endorsed: Filed April 22, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

In Equity—No. 468.

PETITION FOR ALLOWANCE OF APPEAL AND ORDER FIXING BBOND WITH PRAYER FOR SEVERANCE.

The above named John A. Roebling's Sons Company of California, a corporation, intervener in the above entitled cause, conceiving itself aggrieved by the final order and decree of the above entitled Court made and entered by said Court in said cause on the 20th day of December, 1915, wherein and whereby it was ordered and adjudged that the bill of intervention of this petitioner, the John A. Roebling's Sons Company of California, be dismissed, and its claims to priority or preference in payment of its

said account of $21,057.37 in the administration of the properties of said Idaho Railway Light & Power Company, defendant, for which a Receiver was appointed herein, from the income thereof or from the proceeds of the sale of said properties, was denied, hereby appeals from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors filed herewith, and prays that said appeal may be allowed and that citation be issued, as provided by law, and also that an order be made fixing the amount of bond which said petitioner and appellant herein shall give and furnish upon said appeal, and that a transcript of the record, including the papers and proceedings upon which said order and decree were made, duly authenticated, may be sent to said United States Circuit Court of Appeals under the rules of such Court in such cases made and provided.

The petitioner further says that the American Steel & Wire Company, a corporation, General Electric Company, a corporation, Westinghouse Electric & Manufacturing Company, a corporation, Guaranty Trust Company of New York, a corporation, trustee, intervening or preferential claimants, and E. H. Jennings, parties to the above entitled cause, and each of them, were duly notified to join with the undersigned to prosecute an appeal in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the decree rendered in said cause on the 20th day of December, 1915, or that they and each of them would be deemed to acquiesce in the said judgment and that

the undersigned will prosecute said appeal without joining them as a party or parties therein.

Dated: April 24th, 1916.

BEVERLY L. HODGHEAD,

Solicitor for Intervener and Appellant, John A. Roebling's Sons Company of California, a corporation.

Endorsed: Filed April 28, 1916.

W. D. McReynolds, Clerk.

(Title of Court and Cause.)

In Equity—No. 468.

ORDER ALLOWING APPEAL.

Whereas in the District Court of the United States, for the District of Idaho, Southern Division, on the 20th day of December, 1915, a decree was made and entered in the above entitled cause wherein and whereby it was ordered and adjudged that the bill of intervention of said John A. Roebling's Sons Company of California, intervener therein, be dismissed, and wherein and whereby said bill of intervention was dismissed, and the said claim of preference or priority in payment of the account of said John A. Roebling's Sons Company of California against said defendant, Idaho Railway Light & Power Company, for $21,057.37 in the administration of the receivership of said company from the income of said properties or the proceeds of the sale thereof was denied, and

Whereas said John A. Roebling's Sons Company of California has on the 28th day of April, 1916, filed its petition for an allowance of an appeal from said

order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, together with an Assignment of Errors in and by which said petition it has prayed that an order be made fixing the amount of cost bond which it shall give and furnish on said appeal;

Now, Therefore, in consideration of the premises, and good cause appearing therefor, and on motion of Beverly L. Hodghead, Esq., its solicitor, *It is ordered* that said appeal be and the same is hereby permitted and allowed, in which said John A. Roebling's Sons Company of California, a corporation, and I. P. Morris Company, a corporation, whose appeal herein is allowed by separate order made herein, are appellants, and Idaho Railway Light & Power Company, defendant, O. G. F. Markhus, Receiver thereof, Guaranty Trust Company of New York, a corporation, Trustee, under the mortgage referred to in said decree, Electric Investment Company, purchaser at the foreclosure sale of said properties, as set forth in said decree, and the following preferential claimants, to-wit, American Steel & Wire Company, a corporation, General Electric Company, a corporation, and said Westinghouse Electric & Manufacturing Company, a corporation, whose claims for preference or priority in payment were by said decree denied in whole or in part, and who have refused to join in the said appeal and as to whom proper summons and severance has been made, are appellees;

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings herein be forthwith transmitted to

said United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the bond for costs of said appeal be and the same is hereby fixed at the sum of $200.00 with sufficient sureties, according to the provisions of the law and the rules and practice of this Court.

And it further appearing that the American Steel & Wire Company, a corporation, General Electric Company, a corporation, and Westinghouse Electric & Manufacturing Company, a corporation, Guaranty Trust Company of New York, a corporation, trustee, and E. H. Jennings, and each of them, were duly notified in writing to join with the said appellant to prosecute said appeal or they would be deemed to have acquiesced in the said decree, the said appelland would prosecute said appeal without joining them or either of them as a party or parties thereto.

And it further appearing that none of said parties above have appeared within the time prescribed by law and specified in said notice and demand, but has severed itself and themselves in their defense or in support of their claims in this Court in said cause, the said John A. Roebling's Sons Company of California is hereby granted its appeal as aforesaid, and its interests are severed in said appeal from all of the aforesaid parties and claimants herein.

Dated: April 28, 1916.

FRANK S. DIETRICH,
District Judge.

Endorsed: Filed April 28, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

In Equity—No. 468.

ASSIGNMENT OF ERRORS.

Now comes the intervener and appellant, John A. Roebling's Sons Company of California, by its Solicitor, Beverly L. Hodghead, Esq., and having prayed for an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree made and entered in said cause on the 20th day of December, 1915, files the following assignment of errors upon which it will rely upon the prosecution of its said appeal from said decree, and specifies the following particulars in which said decree is erroneous and unjust, to-wit:

(1) Said Court erred in denying and disallowing said claim of John A. Roebling's Sons Company of California as a preferred creditor of said Idaho Railway Light & Power Company, and over the claims of the general creditors of said Idaho Railway Light & Power Company and of the Guaranty Trust Company of New York, Trustee, and of the mortgage bondholders referred to in said decree;

(2) Said Court erred in refusing to direct the payment of said account of John A. Roebling's Sons Company of California for $21,057.37 against said Idaho Railway Light & Power Company and the whole thereof from the income received by the Receiver of said Railway Company from the operation of said properties thereof described and referred to in said decree, and in denying and disallowing the said claim of said appellant for priority or preference in

payment thereof from said income, as prayed for in said Bill;

(3) That said Court erred in refusing to direct the payment of said account of appellant herein from the proceeds of the sale of said property by the Special Master under decree of foreclosure of mortgage in the action No. 517 instituted by the Guaranty Trust Company of New York, Trustee for the mortgage bondholders, as referred to in said decree herein, and in denying and disallowing said claim of appellant for priority and preference of payment from the proceeds of said sale over and above the claims of the said Guaranty Trust Company of New York, as trustee and plaintiff in said action;

(4) That said Court erred in ordering, adjudging and decreeing that the said claim of John A. Roebling's Sons Company of California, a corporation, appellant herein, was inferior and subordinate in right to the claims of the Guaranty Trust Company of New York under the decree in favor of said Trustee in said cause No. 517;

(5) That said Court erred in ordering, adjudging and decreeing that the said claim of appellant herein is not a lien against any of the property covered by said decree of foreclosure in said cause No. 517 and belonging to said Idaho Railway Light & Power Company, defendant herein, and in ordering, adjudging and decreeing that said property in the hands of the Electric Investment Company, the purchaser thereof at the foreclosure sale, is free from any lien and that said claim of appellant herein was only enforcible

to the extent that there were assets available for the payment thereof as prescribed in said decree, to-wit, to the extent of three and 22-100 cents (.0322) on each dollar of said claim.

(6) Said Court erred in holding, determining and adjudging that the claim of said John A. Roebling's Sons Company of California, the intervener, was not entitled to preference over the lien of the pre-existing mortgage or trust deed of the Guaranty Trust Company of New York because the material and supplies out of which said claim arose were not furnished or supplied within six months prior to the institution of the receivership in said above entitled cause.

(7) The Court erred in holding, determining and adjudging that the said claim of John A. Roebling's Sons Company of Califronia, appellant herein, was not entitled to preference over the pre-existing mortgage or trust deed of the Guaranty Trust Company of New York because the material and supplies furnished by said intervener, out of which said claim arose, were furnished for new construction and not for repair or maintenance of the existing plant of said defendant Railway Company and in the ordinary operation and maintenance of said property.

(8) Said Court erred in ordering and adjudging by said decree that the income of said receivership received, and all collections of cash made by said Receiver subsequent to the date of the filing of said petition or bill of said Guaranty Trust Company of New York for the foreclosure of said mortgage on the 19th day of December, 1914, be impounded for

the benefit of said Guaranty Trust Company of New York and the bondholders represented by it, and adjudging that the right of said Guaranty Trust Company of New York, said Trustee, in and to said income and collections was superior to the rights and claims of appellant herein.

(9) Said Court erred in adjudging and decreeing that the balance of cash deemed to be on hand to apply on the claims of general creditors was $156,464.06, and in refusing to add to said fund the income from said receivership after said 19th day of December, 1914.

Wherefore said John A. Roebling's Sons Company of California, said intervener and appellant, prays that said judgment and decree of said District Court of the United States, made and entered on the 20th day of December, 1915, in the making of which error is herein assigned, be reversed and that said District Court be directed to enter an order reversing the same, and ordering and adjudging that the claim of said John A. Roebling's Sons Company of California, appellant herein, for the sum of $21,057.37 is entitled to preference and priority in payment from the income of said properties of said Idaho Railway Light & Power Company, the defendant in said action, and from the proceeds of the sale thereof over the lien of the mortgage or trust deed of said Guaranty Trust Company of New York, and over the claims of general creditors of said defendant Railway Company, and that the relief prayed for in said bill of intervention of intervener and appellant here-

in be granted, and for such other relief, orders and decrees as said intervener and appellant is entitled to in equity.

Dated this 24th day of April, 1916.

BEVERLY L. HODGHEAD,

Solicitor for said Intervener and Appellant.

Endorsed: Filed April 28, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

In Equity—No. 468.

PETITION FOR ALLOWANCE OF APPEAL AND ORDER FIXING BOND WITH PRAYER FOR SEVERANCE.

The above named I. P. Morris Company, a corporation, cross-complainant in the above entitled cause, conceiving itself aggrieved by the final order and decree of the above entitled Court made and entered by said Court in said cause on the 20th day of December, 1915, wherein and whereby it was ordered and adjudged that the bill of intervention of this petitioner, the I. P. Morris Company, be dismissed, and its claim to priority or preference in payment of its said account of $26,844.21 in the administration of the properties of said Idaho Railway Light & Power Company, defendant, for which a Receiver was appointed herein, from the income thereof or from the proceeds of the sale of said properties, was denied, hereby appeals from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignment of Errors filed herewith, and prays that said

appeal may be allowed and that citation be issued, as provided by law, and also that an order be made fixing the amount of bond which said petitioner and appellant herein shall give and furnish upon said appeal, and that a transcript of the record, including the papers and proceedings upon which said order and decree were made, duly authenticated, may be sent to said United States Circuit Court of Appeals under the rules of such Court in such cases made and provided.

The petitioner further says that the American Steel & Wire Company, a corporation, General Electric Company, a corporation, Westinghouse Electric & Manufacutring Company, a corporation, Guaranty Trust Company of New York, a corporation, trustee, intervening or preferential claimants, and E. H. Jennings, parties to the above entitled cause, and each of them, were duly notified to join with the undersigned to prosecute an appeal in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the decree rendered in said cause on the 20th day of December, 1915, or that they and each of them would be deemed to acquiesce in the said judgment and that the undersigned will prosecute said appeal without joining them as a party or parties therein.

Dated: April 24th, 1916.

BEVERLY L. HODGHEAD,

Solicitor for Cross-complainant and Appellant,

I. P. Morris Company, a corporation.

Endorsed: Filed April 28, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause.)
In Equity—No. 468.
ORDER ALLOWING APPEAL.

Whereas in the District Court of the United States, for the District of Idaho, Southern Division, on the 20th day of December, 1915, a decree was made and entered in the above entitled cause wherein and whereby it was ordered and adjudged that the cross bill of said I. P. Morris Company, cross-complainant therein, be dismissed, and wherein and whereby said cross bill was dismissed, and the said claim of preference or priority in payment of the account of said I. P. Morris Company against said defendant, Idaho Railway Light & Power Company, for $26,844.21 in the administration of the receivership of said company from the income of said properties or the proceeds of the sale thereof was denied, and

Whereas said I. P. Morris Company has on the 28th day of April, 1916, filed its petition for an allowance of an appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, together with an Assignment of Errors in and by which said petition it has prayed that an order be made fixing the amount of cost bond which it shall give and furnish on said appeal;

Now, Therefore, in consideration of the premises, and good cause appearing therefor, and on motion of Beverly L. Hodghead, Esq., its solicitor, *It is ordered* that said appeal be and the same is hereby permitted and allowed, in which said I. P. Morris Company, a corporation, John A. Roebling's Sons Com-

pany of California, a corporation, whose appeal herein is allowed by separate order made herein, are appellants, and Idaho Railway Light & Power Company, defendant, O. G. F. Markhus, Receiver thereof, Guaranty Trust Company of New York, a corporation, Trustee, under the mortgage referred to in said decree, Electric Investment Company, purchaser at the foreclosure sale of said properties, as set forth in said decree, and the following preferential claimants, to-wit, American Steel & Wire Company, a corporation, General Electric Company, a corporation, and said Westinghouse Electric & Manufacturing Company, a corporation, whose claims for preference or priority in payment were by said decree denied in whole or in part, and who have refused to join in the said appeal and as to whom proper summons and severance has been made, are appellees;

It is further ordered that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the bond for costs of said appeal be and the same is hereby fixed at the sum of $200.00 with sufficient sureties, according to the provisions of the law and the rules and practice of this Court.

And it further appearing that the American Steel & Wire Company, a corporation, General Electric Company, a corporation, Westinghouse Electric &

Manufacturing Company, a corporation, Guaranty Trust Company of New York, a corporation, trustee, and E. H. Jennings, and each of them, were duly notified in writing to join with the said appellant to prosecute said appeal or they would be deemed to have acquiesced in the said decree, the said appellant would prosecute said appeal without joining them or either of them as a party or parties thereto,

And it further appearing that none of said parties above have appeared within the time prescribed by law and specified in said notice and demand, but has severed itself and themselves in their defence or in support of their claims in this Court in said cause, the said I. P. Morris Company is hereby granted its appeal as aforesaid, and its interests are severed in said appeal from all of the aforesaid parties and claimants herein.

Dated: April 28, 1916.

(Signed) FRANK S. DIETRICH,
District Judge.

Endorsed: Filed April 28, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

In Equity—No. 468.

ASSIGNMENT OF ERRORS.

Now comes the cross-complainant and appellant, I. P. Morris Company, by its solicitor, Beverly L. Hodghead, Esq., and having prayed for an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree made and

entered in said cause on the 20th day of December, 1915, files the following assignment of errors upon which it will rely upon the prosecution of its said appeal from said decree, and specifies the following particulars in which said decree is erroneous and unjust, to-wit:

(1) Said Court erred in denying and disallowing said claim of I. P. Morris Company as a preferred creditor of said Idaho Railway Light & Power Company, and over the claims of the general creditors of said Idaho Railway Light & Power Company and of the Guaranty Trust Company of New York, Trustee, and of the mortgage bondholders referred to in said decree;

(2) Said Court erred in refusing to direct the payment of said account of I. P. Morris Company for $26,844.21 against said Idaho Railway Light & Power Company and the whole thereof from the income received by the Receiver of said Railway Company from the operation of said properties thereof described and referred to in said decree, and in denying and disallowing the said claim of said appellant for priority or preference in payment thereof from said income, as prayed for in said Bill;

(3) That said Court erred in refusing to direct the payment of said account of appellant herein from the proceeds of the sale of said property by the Special Master under decree of foreclosure of mortgage in the action No. 517 instituted by the Guaranty Trust Company of New York, Trustee for the mortgage bondholders, as referred to in said decree herein,

and in denying and disallowing said claim of appellant for priority and preference of payment from the proceeds of said sale over and above the claims of the said Guaranty Trust Company of New York, as trustee and plaintiff in said action;

(4) That said Court erred in ordering, adjudging and decreeing that the said claim of I. P. Morris Company, a corporation, appellant herein, was inferior and subordinate in right to the claims of the Guaranty Trust Company of New York under the decree in favor of said Trustee in said cause No. 517;

(5) That said Court erred in ordering, adjudging and decreeing that the said claim of appellant herein is not a lien against any of the property covered by said decree of foreclosure in said cause No. 517 and belonging to said Idaho Railway Light & Power Company, defendant herein, and in ordering, adjudging and decreeing that said property in the hands of the Electric Investment Company, the purchaser thereof at the foreclosure sale, is free from any lien and that said claim of appellant herein was only enforcible to the extent that there were assets available for the payment thereof as prescribed in said decree, to-wit, to the extent of three and 22-100 cents (.0322) on each dollar of said claim;

(6) Said Court erred in holding, determining and adjudging that the claim of said I. P. Morris Company, the cross complainant, was not entitled to preference over the line of the pre-existing mortgage or trust deed of the Guaranty Trust Company of New York because the material and supplies out of which

said claim arose were not furnished or supplied within six months prior to the institution of the receivership in said above entitled cause.

(7) The Court erred in holding, determining and adjudging that the said claim of I. P. Morris Company, appellant herein, was not entitled to preference over the pre-existing mortgage or trust deed of the Guaranty Trust Company of New York because the material and supplies furnished by said cross-complainant, out of which said claim arose, were furnished for new construction and not for repair or maintenance of the existing plant of said defendant Railway Company and in the ordinary operation and maintenance of said property.

(8) Said Court erred in ordering and adjudging by said decree that the income of said receivership received, and all collections of cash made by said Receiver subsequent to the date of the filing of said petition or bill of said Guaranty Trust Company of New York for the foreclosure of said mortgage on the 19th day of December, 1914, be impounded for the benefit of said Guaranty Trust Company of New York and the bondholders represented by it, and adjudging that the right of said Guaranty Trust Company of New York, said Trustee, in and to said income and collections was superior to the rights and claims of appellant herein.

(9) Said Court erred in adjudging and decreeing that the balance of cash deemed to be on hand to apply on the claims of general creditors was $156,-464.06, and in refusing to add to said fund the income

from said receivership after the said 19th day of December, 1914.

Wherefore said I. P. Morris Company, said cross-complainant and appellant, prays that said judgment and decree of said District Court of the United States, made and entered on the 20th day of December, 1915, in the making of which error is herein assigned, be reversed and that said District Court be directed to enter an order reversing the same, and ordering and adjudging that the claim of said I. P. Morris Company, appellant herein, for the sum of $26,844.21 is entitled to preference or priority in payment from the income of said properties of said Idaho Railway Light & Power Company, the defendant in said action, and from the proceeds of the sale thereof over the lien of the mortgage or trust deed of said Guaranty Trust Company of New York, and over the claims of general creditors of said defendant Railway Company, and that the relief prayed for in said cross-bill of cross-complainant and appellant herein be granted, and for such other relief, orders and decrees as said cross-complainant and appellant is entitled to in equity.

Dated: this 24th day of April, 1916.

BEVERLY L. HODGHEAD,
Solicitor for said Cross-complainant and Appellant.

Endorsed: Filed April 28, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause.)
In Equity—No. 468.

Know All Men by These Presents:

That the American Surety Company of New York, a corporation duly organized under the laws of the State of New York and duly qualified and authorized to do business and to become surety on bonds within the State of Idaho, acknowledges itself to be indebted to the Idaho Railway Light & Power Company, a corporation, O. G. F. Markhus, Receiver thereof, Guaranty Trust Company of New York, a corporation, Trustee, Electric Investment Company, a corporation, American Steel & Wire Company, a corporation, General Electric Company, a corporation, and Westinghouse Electric & Manufacturing Company, a corporation, in the sum of Two Hundred ($200) Dollars, conditioned that whereas on the 20th day of December, 1915, in the District Court of the United States of the District of Idaho, Southern Division, in said above entitled action pending in that Court, wherein Westinghouse Electric & Manufacturing Company was plaintiff and the Idaho Railway Light & Power Company was defendant, and said John A. Roebling's Sons Company of California, a corporation, was intervener, a decree was rendered and entered against said John A. Roebling's Sons Company of California, a corporation, denying its claim of preference or priority in the payment of its account against said Idaho Railway Light & Power Company, and the said John A. Roebling's Sons Company of California having obtained an appeal to the United States Circuit Court of Appeals for the Ninth

Circuit, to reverse the said decree, and citation having been directed to said Idaho Railway Light & Power Company, a corporation, O. G. F. Markhus, Receiver thereof, Guaranty Trust Company of New York, a corporation, Trustee, Electric Investment Company, a corporation, American Steel & Wire Company, a corporation, General Electric Company, a corporation, and Westinghouse Electric & Manufacturing Company, a corporation, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, State of California, on the 29th day of May, 1916, to show cause why said decree rendered against said appellant should not be corrected,

Now, Therefore, if the said John A. Roebling's Sons Company of California, a corporation, shall prosecute its said appeal to effect and answer all costs, if it shall fail to make its plea good, then the above obligation will be void, otherwise to remain in full force and effect.

AMERICAN SURETY COMPANY OF NEW YORK,
By BRADLEY SHEPPARD,
Resident Vice-President.
McKEEN F. MORROW,
(Seal.) Resident Assistant Secretary.

Approved as to form and sufficiency of surety this 29th day of April, 1916.

(Signed) FRANK S. DIETRICH,
District Judge.

Endorsed: Filed April 29, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

In Equity—No. 468.

Know All Men by These Presents:

That the American Surety Company of New York, a corporation duly organized under the laws of the State of New York and duly qualified and authorized to do business and to become surety on bonds within the State of Idaho, acknowledges itself to be indebted to the Idaho Railway Light & Power Company, a corporation, O. G. F. Markhus, Receiver thereof, Guaranty Trust Company of New York, a corporation, Trustee, Electric Investment Company, a corporation, American Steel & Wire Company, a corporation, General Electric Company, a corporation, and Westinghouse Electric & Manufacturing Company, a corporation in the sum of Two Hundred ($200) Dollars, conditioned that whereas on the 20th day of December, 1915, in the District Court of the United States of the District of Idaho, Southern Division, in said above entitled action pending in that Court, wherein Westinghouse Electric & Manufacturing Company was plaintiff and the Idaho Railway Light & Power Company was defendant, and said I. P. Morris Company, a corporation, was cross-complainant, a decree was rendered and entered against said I. P. Morris Company, a corporation, denying its claim of preference or priority in the payment of its account against said Idaho Railway Light & Power Company, and the said I. P. Morris Company having obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the said decree, and citation having been di-

rected to said Idaho Railway Light & Power Company, a corporation, O. G. F. Markhus, Receiver thereof, Guaranty Trust Company of New York, a corporation, Trustee, Electric Investment Company, a corporation, American Steel & Wire Company, a corporation, General Electric Company, a corporation, and Westinghouse Electric & Manufacturing Company, a corporation, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, State of California, on the 29th day of May, 1916, to show cause why said decree rendered against said appellant should not be corrected,

Now, Therefore, if the said I. P. Morris Company, a corporation, shall prosecute its said appeal to effect and answer all costs, if it shall fail to make its plea good, then the above obligation will be void, otherwise to remain in full force and effect.

AMERICAN SURETY COMPANY OF NEW YORK,
By BRADLEY SHEPPARD,
Resident Vice-President.
McKEEN F. MORROW,
Resident Assistant Secretary.

(Seal.)

Approved as to form and sufficiency of surety, this 29th day of April, 1916.

FRANK S. DIETRICH,
District Judge.

Endorsed: Filed April 29, 1916. W. D. McReynolds, Clerk.

(Title of Court and Cause.)
In Equity—No. 468.
PRAECIPE FOR RECORD.

To the Clerk of the above entitled District Court:

You will please issue, prepare and transcribe for the joint record on appeal herein by John A. Roebling's Sons Company of California, a corporation, intervener, and I. P. Morris Company, a corporation, cross-complainant, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under an appeal perfected to said Court in said suit by each of the foregoing appellants, and include in said transcript, copy of the following pleadings, exhibits, papers, opinion of the Court, final decree and statement of evidence, as herein set forth, to-wit:

(1) Original Bill of Complaint of Westinghouse Electric & Manufacturing Company, No. 468;

(2) Answer of defendant Idaho Railway Light & Power Company, No. 468;

(3) Order appointing Receiver;

(4) Bill of Intervention of John A. Roebling's Sons Company of California, a corporation, filed in Consolidated Actions, Nos. 468 and 470, omitting copy of account attached to said bill;

(5) Stipulation of Facts with respect thereto, filed in said Consolidated Actions;

(6) Cross Bill of I. P. Morris Company, a corporation, filed in said Consolidated Actions;

(7) Answer to said Cross Bill of said I. P. Morris Company, filed in said Consolidated Actions;

(7a) Stipulation of Facts on I. P. Morris cross bill;

(8) Stipulation of Facts concerning all preferential claimants, filed in said Consolidated Actions June 15th, 1914;

(9) Stipulation dated October 10th, 1914, regarding dismissal of Cause No. 470, and a determination of all petitions in Cause No. 468;

(10) Stipulation as to Record on Appeal, filed herein;

(11) Statement of Evidence;

(12) Memorandum Decision of the Court on Intervening Claims, dated April 26th, 1915;

(13) Final Decree, dated December 20, 1915;

(14) Summons and Notice to join in Appeal;

(15) Petition of John A. Roebling's Sons Company of California, for Appeal and Severance;

(16) Order allowing Appeal and Severance and fixing Bond of John A. Roebling's Sons Company of California;

(17) Assignment of Errors by John A. Roebling's Sons Company of California;

(18) Petition for Appeal by I. P. Morris, with Prayer for Severance;

(19) Order allowing Appeal and Severance, and fixing Bond of I. P. Morris Company;

(20) Assignment of Errors by I. P. Morris Company;

(21) Bond of John A. Roebling's Sons Company of California on Appeal;

(22) Bond of I. P. Morris Company on Appeal;

(23) Citation on Appeal;

(24) This Praecipe,

and all other papers which said appellants shall file herein in prosecution of or upon their said appeals.

Dated: May 1st, 1916.

BEVERLY L. HODGHEAD,

Solicitor for said Complainants and Appellants, John A. Roebling's Sons Company of California, a corporation, and I. P. Morris Company, a corporation.

State of Idaho,

County of Ada,—ss.

McKeen F. Morrow, being first duly sworn, deposes and says: That he is a citizen of the United State over the age of 21 years;

That he served the praecipe for record in the above entitled cause upon Messrs. Wyman & Wyman, solicitors for Guaranty Trust Company of New York, Trustee; Messrs. Hawley & Hawley, solicitors for General Electric Company, and Messrs. Wood & Driscoll, solicitors for American Steel and Wire Company on the 2nd day of May, 1916, by delivering copies of said praecipe to each of said firms of solicitors at their offices in Boise, Idaho;

That he served a copy of said praecipe on John F. McLane, solicitor for Idaho Railway, Light & Power Company, O. G. F. Markhus, Receiver of said company, and Electric Investment Company, by depositing a copy of said praecipe in the United States Post Office at Boise, Idaho, in an envelope addressed to said John F. McLane, care Utah Power & Light Com-

pany, Salt Lake City, Utah, with ordinary postage prepaid thereon on said 2nd day of May, 1916, and upon B. S. Crow, Esq., solicitor for Westinghouse Electric and Manufacturing Company, by depositing a copy of said praecipe in the United States Post Office at Boise, Idaho, in an envelope addressed to B. S. Crow, care O. S. L. Legal Department, Salt Lake City, Utah, with ordinary postage prepaid thereon on said 2nd day of May, 1916;

That the above addresses are the regular addresses of said solicitors last mentioned, and there is direct communication between the post office at Boise, Idaho, and the post office at Salt Lake City, Utah.

McKEEN F. MORROW.

Subscribed and Sworn To before me this 2nd day of May, 1916.

EDNA L. HICE,
Notary Public for Ada County, residing at Boise, Idaho.

(Seal.)

Endorsed: Filed May 2, 1916.
W. D. McReynolds, Clerk.
By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)
In Equity—No. 468.
CITATION ON APPEAL.

United States of America,—ss.

The President of the United States, Greeting:

To Idaho Railway Light & Power Company, a corporation, O. G. F. Markhus, Receiver thereof,

Guaranty Trust Company of New York, a corporation, Trustee, Electric Investment Company, a corporation, American Steel & Wire Company, a corporation, General Electric Company, a corporation, and Westinghouse Electric & Manufacturing Company, a corporation:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, State of California, within thirty days from date hereof, to-wit, on the 29th day of May, 1916, pursuant to an order or orders allowing an appeal of record in the United States Court of the District of Idaho, Southern Division, taken and filed by John A. Roebling's Sons Company of California, a corporation, intervener, and I. P. Morris Company, a corporation, cross-complainant, wherein the said John A. Roebling's Sons Company of California, a corporation, and said I. P. Morris Company, a corporation, are appellants and you are appellees, to show cause, if any there be, why the decree rendered and entered against said appellants December 20th, 1915, as in said orders allowing said appeals mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank S. Dietrich, United States District Judge for the District of Idaho, Southern Division, the 29th day of April, 1916.

FRANK S. DIETRICH,
Judge of the United States District Court.

Attest: W. D. McReynolds, Clerk.

(Seal)

Service of the above and foregoing citation and receipt of a copy thereof is hereby admitted this 29th day of April, 1916.

WYMAN & WYMAN,
Solicitors for Guaranty Trust Co.
HAWLEY & HAWLEY,
Solicitors for General Electric Co.
WOOD & DRISCOLL,
Solicitors for American Steel and Wire Company.

Service of the above and foregoing citation and receipt of a copy thereof is hereby admitted this 1st day of May, 1916.

JOHN F. MacLANE,
Solicitor for Idaho Railway Light and Power Company and O. G. F. Markhus, Receiver.
JOHN F. MacLANE,
Solicitor for Electric Investment Company.
PERKY & CROW,
B. S. CROW,
Solicitors for Westinghouse Electric & Mfg Co.

Endorsed: Filed May 16, 1916.
W. D. McReynolds, Clerk.
By Pearl E. Zanger, Deputy.

RETURN TO RECORD.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the United States

Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

W. D. McREYNOLDS,
Clerk.

(Seal)

By PEARL E. ZANGER,
Deputy.

ATTEST:

(Title of Court and Cause.)

CLERK'S CERTIFICATE.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript, consisting of pages 1 to 196, inclusive, to be full, true, and correct copies of the pleadings and proceedings in the above entitled cause in accordance with the praecipe on file herein, and that the same constitutes the transcript of record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the record herein amounts to the sum of $247.80, and that the same has been paid by the appellant.

Witness my hand and the seal of the said Court affixed at Boise, Idaho, this 8th day of June, 1916.

W. D. McREYNOLDS,
Clerk.

(Seal)

By PEARL E. ZANGER,
Deputy.

In the District Court of the United States for the Southern District of Idaho, Southern Division.

IN EQUITY—No. 470 (No. 468 Consolidated).

GUARANTY TRUST COMPANY OF NEW YORK, Trustee,

Plaintiff,

vs.

IDAHO RAILWAY, LIGHT AND POWER COMPANY, a Corporation, IDAHO TRACTION COMPANY, a Corporation, WESTINGHOUSE ELECTRIC AND MANUFACTURING COMPANY, a Corporation, E. H. JENNINGS, I. P. MORRIS COMPANY, a Corporation,

Defendants,

AND

IN EQUITY—No. 468.

WESTINGHOUSE ELECTRIC AND MANUFACTURING COMPANY, a Corporation,

Plaintiff,

vs.

IDAHO RAILWAY, LIGHT AND POWER COMPANY, a Corporation,

Defendant.

Certified Copy of Answer of Guaranty Trust Company to Bill in Intervention, etc.

To the Honorable the Judges of the District Court of the United States for the District of Idaho, Southern Division.

AND COMES NOW the plaintiff, Guaranty Trust

Company of New York, Trustee, a citizen and a corporation of the City of New York, and a resident of the City of New York, in the County of New York, and State of New York and now, and at all times hereafter, saving to itself all manner of benefit of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the bill of intervention herein of John A. Roebling's Sons Company of California, and to all or some of the subject matter named and therein set forth, by way of answer to said bill of intervention or to so much thereof as this plaintiff is advised it is material and necessary for it to answer, and so answering respectfully shows to this Honorable Court as follows:

I.

That this plaintiff has no knowledge, information, remembrance, or belief with respect to any of the matters set forth in that part of paragraph two of the said bill of intervention which is hereinafter denied, and on that ground and for that reason this plaintiff denies the said allegation that the said Idaho Railway, Light & Power Company received a large income, profit, and earnings from the operation of the roads and power plants described and referred to in said bill of intervention, but in that regard this plaintiff says it has no knowledge, information, remembrance or belief in respect to what income or profit or earnings said defendant may receive or may have received therefrom.

II.

That this plaintiff has no knowledge, information,

remembrance or belief with respect to any of the matters set forth in paragraph six of said bill of intervention, and therefore and upon that ground it denies that the said intervenor has any interest in any of the property of said Idaho Railway, Light & Power Company whatsoever, and denies that it has any interest or claim in or to the proceeds of any part thereof; denies that in or about the months of March, April and May, 1913, or at any other time or at all, the said intervenor sold and delivered or sold or delivered to the said Idaho Railway, Light & Power Company any copper wire whatsoever; and denies that said defendant agreed to pay said intervenor the sum of $38,577.17 or any other sum; and particularly denies that it sold copper wire in the quality or amount or at the times as set forth in the statement of said account attached to the said bill of intervention, or at all; that it has no knowledge that any sum whatever has been paid by said Idaho Railway, Light & Power Company to said intervenor on any account whatever and denies that any sum whatsoever is now due, owing or unpaid or due or owing or unpaid from said defendant to said intervenor.

III.

That this plaintiff has no knowledge, information, remembrance, or belief with respect to any of the matters set forth in paragraph seven of said bill of intervention, and therefore this plaintiff denies that any debt of said defendant to said intervenor and particularly the said claim set forth in said bill of intervention should be preferred in order of pay-

ment or otherwise either out of the income of any of the property of said Idaho Railway, Light & Power Company or out of the proceeds of the sale thereof as against the claims of the mortgage bondholders and other creditors of said defendant or at all; and this plaintiff denies, on the ground hereinbefore stated that said merchandise, material and supplies or any merchandise, or material or supplies were sold by the intervenor to said defendant, and denies that the same consisted of copper wire to be used in the construction, maintenance and repair or construction or maintenance or repair of some or any of the electric or power transmission lines of said defendant Idaho Railway, Light & Power Company or at all; and denies that, at the time of said pretended sale or at any other time, said wire was necessary for the use of said defendant in the construction, alteration or repair of said or any power transmission line of the defendant or for any other purpose; and denies that said or any wire was actually used in the construction and repair or construction or repair or was actually used at all by this defendant, and denies that the same is still being used in the maintenance and operation or maintenance or operation of said or any electric or power transmission system of said defendant, or at all, and denies that all or any of the same is or at any time has been necessary for the continued maintenance and operation or operation or at all of the power transmission systems of said defendant or for any other purpose; and denies that the earnings of said or any property in the possession of said re-

ceiver are derived or have been derived from the use of any material sold by said intervenor to defendant, and denies that without such material said property could not have been operated or any earnings derived therefrom; and denies that all or any of said material and supplies or material or supplies were necessary for the use of the said Idaho Railway, Light & Power Company in keeping and preserving or in keeping or preserving the said or any mortgaged property, or any part thereof, in operative condition or any condition, or at all; and denies that the same was necessary to the maintenance and operation or maintenance or operation thereof; and denies that the said material and supplies or material or supplies did in anywise enhance the value of said property or add to the security of the bondholders thereof, and denies that said or any account of said intervenor for said material and supplies or material or supplies or at all was one of the current debts and expenses or current debts or expenses or were debts or expenses in anywise of the maintenance and operation or maintenance or operation of said property.

IV.

That this plaintiff has no knowledge, information, remembrance or belief with respect to any of the matters set forth in paragraph eight of said bill of intervention, and therefore and on that ground it denies that any material and supplies or material or supplies referred to in said bill of intervention were of such character as to entitle*d* said intervenor, under the laws of the State of Idaho or at all, to

claim and assert or to claim or assert a mechanic's or any lien upon any of the property of the said defendant Idaho Railyway, Light & Power Company; and denies that said intervenor did not file any lien upon said or any property for the reason that upon the request of the said Idaho Railway, Light & Power Company or by reason of any request or at all by an agreement made between said intervenor and said last named corporation to the effect that the said intervenor should and would or should or would refrain from filing and asserting or filing or asserting any lien upon the property of said Idaho Railway, Light & Power Company for the amount and value or the amount or value of said material and supplies or material or supplies or any materials or supplies or at all, that said Idaho Railway, Light & Power Company would and did or would or did waive the failure to file and assert or file or assert said lien and would treat and consider or would treat or consider the amount of said or of any claim for the value of said material and supplies or material or supplies or at all as a superior and preferred or a superior or preferred claim or any claim upon any property whatsoever to the same extent as if a lien were filed and asserted or filed or asserted under the laws of the State of Idaho, or at all, and in that respect denies that any agreement was made between said intervenor and said Idaho Railway, Light & Power Company whatsoever, with respect to the filing or the waiving of the filing of any lien; and denies that the said Idaho Railway, Light & Power Company, its officers and

agents, or that the said company or its officers or agents on any consideration whatsoever promised and agreed or promised or agreed to pay for said or any material and supplies or material or supplies at any time whatsoever or as a preferred claim out of the income and receipts or income or receipts of said corporation.

V.

That this plaintiff has no knowledge, information, remembrance or belief upon any of the matters set forth in paragraph nine of said bill of intervention, and therefore and on that ground it denies that large or any sum of money received by the said Idaho Railway, Light & Power Company from any source whatsoever or at any time whatsoever have been diverted from the funds of said corporation, but plaintiff admits that on or about the 30th day of May, 1913, the said Idaho Railway, Light & Power Company paid interest upon the mortgage bonds held by this plaintiff in the sum of $165,750.00, but denies that the said sum of money so paid as interest upon said bonds or any part thereof whatsoever should have been used and applied or used or applied by said Railway Company or at all for any other purpose whatsoever that as hereinbefore specifically admitted, it was used and applied, and in particular this plaintiff denies that any part of said sum should have been used and applied or used or applied by said Idaho Railway, Light & Power Company to pay its expenses for maintenance and operation and repair, or maintenance or operation or repair of any of its properties or to pay any part of

the demand of the said intervenor herein; and denies that any income and revenue or income or revenue derived from the operation of said properties or any part thereof has been paid to this plaintiff as trustee or otherwise on account of said bonded indebtedness or at all.

VI.

That this plaintiff has no knowledge, information, remembrance or belief with respect to any of the matters set forth in paragraph ten of said bill of intervention, and therefore and on that ground it denies that if the said properties, estates, premises, rights, contracts, privileges, equipment and franchises described in the bill of complaint of this plaintiff be declared subject to the lien of mortgage of the plaintiff and the same be foreclosed and sold by decree of this court as prayed for in the said complaint, the same cannot be sold for a sum sufficient to discharge and repay the mortgage bond indebtedness claimed and alleged by this plaintiff to be due and payable under said mortgage, and denies that said intervenor is without adequate remedy at law.

WHEREFORE, this plaintiff having fully answered all the matters in said bill in intervention which is material to be answered, prays the Court that the said bill of intervention be dismissed, and that the said intervenor be decreed to be without right to or interest in any part of the said property described in this plaintiff's amended bill of complaint herein, and that this plaintiff have its costs herein against the said intervenor, and such other

and further relief as may be just and equitable.

GUARANTY TRUST COMPANY,
Trustee.

WYMAN & WYMAN,
Solicitors for Plaintiff Guaranty Trust Company of New York, Trustee.

FRANK T. WYMAN,
Counsel for the Plaintiff Guaranty Trust Company of New York, Trustee.

Service admitted this 4th day of April, 1914.

BEVERLY A. HODGHEAD,
RICHARDS & HAGA,
McKEEN F. MORROW,
Solicitors for John A. Roebling's Sons Company.

UNITED STATES OF AMERICA.
District of Idaho,—ss.

I, W. D. McReynolds, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing copy of the Answer of Guaranty Trust Company to Bill in Intervention of the John A. Roebling's Sons, filed April 4, 1914, in consolidated causes Nos. 470 and 468, has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original, as the same appears of record and on file at my office and in my custody, and that the cost of said transcript amounts to the sum of $4.40, which has been paid by the appellants John A. Roebling's Sons.

In testimony whereof, I have set my hand and

affixed the seal of said court in said district this 22d day of July, 1916.

[Seal] W. D. McREYNOLDS,
Clerk.

By ————,
Deputy.

[Ten Cent Internal Revenue Stamp. Canceled July 22, 1916. W. D. M.]

[Endorsed]: Nos. 470–468. In the District Court of the United States of the *Southern* District of Idaho, Southern Division. Guaranty Trust Company of New York, Trustee, Plaintiff, vs. Idaho Railway, Light & Power Company, a Corporation, Idaho Traction Company, a Corporation, Westinghouse Electric and Manufacturing Company, a Corporation, E. H. Jennings, I. P. Morris Company, a Corporation, and Westinghouse Electric and Manufacturing Company, a Corporation, Plaintiff, vs. Idaho Railway, Light & Power Company, a Corporation, Defendant. In Equity—No. 470 (No. 468 Consolidated). Answer. Filed April 4, 1914. A. L. Richardson, Clerk.

No. 2813. United States Circuit Court of Appeals for the Ninth Circuit. Certified Copy of Answer of Guaranty Trust Company to Bill in Intervention, etc. Filed Jul. 28, 1916. F. D. Monckton, Clerk.